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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 RAMON HERNADEZ,  
4 *on behalf of himself,*  
5 *FLSA Collective Plaintiffs*  
6 *and the Class, et al.,*

Plaintiffs,

v.

17 CV 9541 (RJS)

7 BETWEEN THE BREAD 55th INC.,  
8 et al.,

9 Defendants.

10 -----x

11 New York, N.Y.  
12 October 18, 2018  
13 12:00 p.m.

Before:

14 HON. RICHARD J. SULLIVAN,

District Judge

15 APPEARANCES

16 LEE LITIGATION GROUP  
17 Attorneys for Plaintiffs  
18 BY: WILLIAM BROWN

19 SMITH, GAMBRELL & RUSSELL  
20 Attorneys for Defendants  
21 BY: TODD DOBRY  
22 YASH DAVE

23 ALSO PRESENT: STEVEN MALDONADO, Spanish interpreter  
24  
25

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1 (Case called)

2 THE COURT: All right. Good afternoon. Let me take  
3 appearances. For the plaintiffs?

4 MR. BROWN: William Brown for the plaintiff, and I  
5 also have with me in the gallery --

6 THE COURT: Tell me who is at the table with you  
7 first.

8 MR. BROWN: This is Jane Wang, also have Radames Duran  
9 who is going to be assisting me.

10 THE COURT: Okay. Ms. Wang, is that right?

11 MS. WANG: Yes.

12 THE COURT: And?

13 MR. BROWN: Radames Duran.

14 THE COURT: And who is here with you in the back?

15 MR. BROWN: We have five plaintiffs, Jorge Menendez,  
16 Carlos Gonzalez, Constantino Hernandez --

17 THE COURT: Hernandez?

18 MR. BROWN: Hernandez.

19 Jose Reyes.

20 THE COURT: The baseball player?

21 MR. BROWN: No.

22 THE COURT: Not the baseball player.

23 MR. BROWN: Not the same guy. And Mauro Teutle.

24 THE COURT: What's the last name.

25 MR. BROWN: Teutle, T-E-U-T-L-E.

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1 THE COURT: Okay. Good afternoon. And everyone  
2 speaks English or no?

3 MR. BROWN: No, we have an interpreter.

4 THE COURT: Okay. From the defendants?

5 MR. DOBRY: Good afternoon, your Honor, Todd Dobry and  
6 Yash Dave on behalf of the defendants.

7 THE COURT: Okay. And with you at counsel table?

8 MR. DOBRY: We have Ms. Eisen, your Honor, she's a  
9 defendant, and then this is a witness for this afternoon, Gina  
10 Puppo.

11 THE COURT: All right. Thanks.

12 So we're here for a hearing because I guess there are  
13 disputed issues of fact with respect to what exactly has gone  
14 on since this suit was filed, and particularly with respect to  
15 meetings related to arbitration agreements that would  
16 effectively take this case out of federal court and move it to  
17 an arbitrator's panel arguably, and would affect the ability of  
18 other plaintiffs to join this litigation if there were an  
19 arbitration agreement that was enforceable.

20 So we have had some submissions on this, there's been  
21 some back and forth on this. I hoped it was resolvable, but  
22 seems like it isn't or hasn't been. So I scheduled this  
23 hearing at which I proposed to hear from the witnesses that  
24 were at the meetings to hear exactly what went on, and then I  
25 guess I'll be the fact finder to assess credibility with

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1 respect to whether or not there's been an improper attempt to  
2 interfere with this litigation. That's really the issue.

3 So I'm not married to any particular order. It does  
4 seem to me that it might be most efficient to hear from the  
5 defense witness first and then hear from the plaintiffs, but we  
6 don't have to do it that way. Do you have a view?

7 MR. BROWN: I would prefer to have the plaintiffs  
8 testify first.

9 THE COURT: Why?

10 MR. BROWN: Well, one, there's five of them and they  
11 have taken off from work, and if they could leave earlier,  
12 they're able to leave here, I think it's the better. And also  
13 I think it makes more sense to hear their side version of the  
14 facts and compare with it the defendant's version.

15 THE COURT: The defense version changed a couple of  
16 times, that's why it seems to me it would be more efficient to  
17 do it that way, because that's sort of -- I guess I would like  
18 to hear whether there's one or now a third version that is  
19 being pushed by the defendants. So that was my thinking. Do  
20 you have a view?

21 MR. DOBRY: Yes, your Honor. First I would say that  
22 defendant's position hasn't changed.

23 THE COURT: Well, okay.

24 MR. DOBRY: But I'm not opposed to plaintiffs going  
25 first, since it is their burden of proof here, I just invoke

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1 the rule, your Honor.

2 THE COURT: The rule?

3 MR. DOBRY: Yes, the sequester the witnesses.

4 THE COURT: All right. Some of them are parties,  
5 right, they're all parties?

6 MR. DOBRY: No, your Honor, none of the witnesses  
7 today are parties.

8 MR. BROWN: That's not entirely true, they're opt-ins.

9 THE COURT: Jose Reyes is a party, right?

10 MR. DOBRY: They're not named plaintiffs, your Honor.

11 THE COURT: Well, they're listed on the docket sheet  
12 as plaintiffs. So I mean if this were a trial I wouldn't have  
13 them excused, they would be sitting throughout the trial.

14 MR. DOBRY: That's fine for opt-in plaintiffs, your  
15 Honor.

16 THE COURT: Okay. So how many are opt-in plaintiffs?

17 MR. BROWN: Well, Jose Reyes is named and the rest are  
18 opt-ins, everyone is opt-ins to this action.

19 THE COURT: Teutle is not named. A different Mauro  
20 Teutle is named, right?

21 MR. BROWN: Yes.

22 MR. DOBRY: Jorge Menendez is not a party, your Honor.

23 THE COURT: That sounds right. And Mr. Gonzalez does  
24 not appear to be a party. Mr. Hernandez, that's Ramon  
25 Hernandez or a different Hernandez? Constantino Hernandez,

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1 which Hernandez did you say?

2 MR. DOBRY: Jorge Menendez is not a party.

3 THE COURT: He's not, but there's a Hernandez, I  
4 didn't catch the first name.

5 MR. DOBRY: Present today I believe it is Constantino  
6 Hernandez.

7 THE COURT: So he's on the docket sheet as a  
8 plaintiff. So look, I don't feel that strongly about it. If  
9 you feel -- is there some reason why we should be sequestering  
10 parties from the testimony of other parties?

11 MR. BROWN: I see absolutely no reason for it,  
12 especially since they were pretty much at the same place at the  
13 same time.

14 MR. DOBRY: Your Honor, I add that -- point out for  
15 sequestering that they did provide five virtually identical  
16 declarations in anticipation of today.

17 THE COURT: That is true. I'm a fact finder, I guess  
18 I have the leeway to do this. Let's just take all the  
19 witnesses one at a time.

20 So your witness is also going to step outside?

21 MR. DOBRY: Yes, your Honor.

22 THE COURT: Who will we call first?

23 MR. BROWN: We'll do Jose Reyes.

24 THE COURT: If you could ask the other witnesses to go  
25 out into the hall, we'll begin with Mr. Reyes.

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Reyes - Direct

1 I'll have the interpreter state his name.

2 THE INTERPRETER: Steven Maldonado, M-A-L-D-O-N-A-D-O.

3 (Interpreter sworn)

4 THE COURT: And if I could ask the witness to raise  
5 his hand.

6 JOSE REYES,

7 called as a witness by the Plaintiffs,

8 having been duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. BROWN:

11 THE COURT: If you state your name and spell your name  
12 for the record.

13 THE WITNESS: Jose Reyes, J-O-S-E R-E-Y-E-S.

14 THE COURT: And Mr. Reyes, just keep your voice up  
15 nice and loud. Only answer the questions put to you and this  
16 will go much more efficiently. Okay?

17 THE WITNESS: Okay.

18 THE COURT: You may proceed.

19 MR. BROWN: Thank you.

20 BY MR. BROWN:

21 Q. When did you first start working for Between the Bread?

22 A. October 2017.

23 Q. And what was your position when you were hired?

24 A. Delivery guy.

25 Q. And has your position ever changed?

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Reyes - Direct

1 A. Yes, about six months ago they made me assistant to  
2 catering.

3 THE COURT: Assistant to catering?

4 THE WITNESS: Yes.

5 Q. Did your actual job duties change at all when your title  
6 changed?

7 A. A little.

8 Q. And how?

9 A. We had to do things like help the person who was packaging  
10 and doing things like bringing things to offices, which at  
11 first I did not have to do.

12 Q. Are you still employed by Between the Bread?

13 A. No.

14 Q. When did you stop working there?

15 A. August 25th.

16 Q. I'm going to show you a document --

17 MR. BROWN: May I approach?

18 THE COURT: Yes. What exhibit is this?

19 MR. BROWN: Plaintiff's Exhibit 1, and I think we  
20 agreed to admissibility.

21 THE COURT: So we stipulated to this or no?

22 MR. DOBRY: Exhibit 1, yes.

23 THE COURT: That's received.

24 (Plaintiff's Exhibit 1 received in evidence)

25 Q. Please review what is marked as Exhibit 1.



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Reyes - Direct

1 A. Yes.

2 Q. And before today, have you ever seen this document?

3 A. Yes.

4 Q. When was the first time that you saw this document?

5 A. July 13, 2018.

6 Q. And before July 13, 2018, had you seen this document before  
7 that date?

8 A. No.

9 Q. Do you recall who gave you that document?

10 A. Yes.

11 Q. And who gave you that document?

12 A. Gina.

13 Q. And was Gina previously in this courtroom?

14 THE COURT: Who is Gina?

15 A. Yes.

16 THE COURT: Who is Gina?

17 THE WITNESS: Gina. The way I understood, she was the  
18 person in charge of the documents in the office.

19 THE COURT: Did she work in the same place you worked?

20 THE WITNESS: Not the same place, no, but in the same  
21 company, yes.

22 THE COURT: How many times have you seen her in your  
23 life?

24 THE WITNESS: Like three times.

25 THE COURT: When was the last time?

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Reyes - Direct

1 THE WITNESS: When she gave me the document.

2 THE COURT: Before today?

3 THE WITNESS: Yeah.

4 THE COURT: When did she give you the document?

5 THE WITNESS: July 13.

6 THE COURT: Go ahead.

7 BY MR. BROWN:

8 Q. What did you understand Gina's job to be?

9 A. Simply the paperwork of the company, paperwork, yeah.

10 Q. And on July 13, do you recall approximately what time you  
11 received the document?

12 A. It was like in the morning, like at 10, between 10 and 11  
13 in the morning.

14 Q. And when you received the document, did she give the  
15 document to you one by one or were you part of a group?

16 A. Like part of a group.

17 Q. And how many people were in the group?

18 A. Seven or eight people.

19 Q. And who were these other seven or eight people?

20 A. It was other co-workers that also did deliveries.

21 Q. So it was people who had the same position as you?

22 A. Yes.

23 Q. Did Gina say anything to you as she was distributing the  
24 document?

25 A. Yes, she tried to explain to us and told us that we had to

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Reyes - Direct

1 sign it.

2 Q. Did she just give you this document or did she give you  
3 other documents as well?

4 A. Just this one.

5 Q. Did she attempt to describe what this document was?

6 A. Yes, but I did not understand her.

7 Q. So at the time --

8 THE COURT: Why did you not understand her? She was  
9 speaking in English?

10 THE WITNESS: No, because we were all in a group so I  
11 couldn't really hear her well. I couldn't hear her well and I  
12 didn't understand.

13 THE COURT: What language was she speaking?

14 THE WITNESS: English.

15 THE COURT: Do you speak English enough to understand  
16 what she was saying?

17 THE WITNESS: Yes.

18 THE COURT: All right. Go ahead.

19 BY MR. BROWN:

20 Q. At the time that you received the agreement, did you  
21 understand what it was?

22 A. Yes.

23 Q. What was your understanding?

24 A. That if I signed the paper I would not be able to start a  
25 lawsuit with the company if I had a problem with them.

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Reyes - Direct

1 Q. And do you know if -- did you hear that Gina was  
2 distributing this agreement prior to July 13 to any other  
3 employees?

4 MR. DOBRY: Objection, hearsay.

5 THE COURT: Sustained. I don't care whether he heard  
6 that from someone else. Next question.

7 Q. Do you know how many other employees received the agreement  
8 on July 13?

9 MR. DOBRY: Objection, speculation.

10 THE COURT: Well, do you know how many -- let me make  
11 sure I understand the question. Do you know how many other  
12 employees received the agreement on July 13?

13 Well, how many other employees were in the room with  
14 you when you got the agreement?

15 THE WITNESS: Seven.

16 THE COURT: Go ahead.

17 BY MR. BROWN:

18 Q. And you said previously that you were required to sign this  
19 agreement?

20 A. Yes, it was like an obligation.

21 Q. Did you attempt to have her explain the document at all?

22 A. No.

23 Q. Did she take any questions about the document?

24 A. No.

25 Q. After the agreement was distributed, did you discuss this

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Reyes - Direct

1 with your co-workers?

2 A. Yes.

3 Q. And what did you discuss with your co-workers?

4 A. That we weren't going to sign it. We were all in agreement  
5 not to sign it.

6 Q. And why did you make this agreement not to sign it?

7 A. Because we were part of this lawsuit.

8 Q. So the people you discussed it with were all part of the  
9 lawsuit?

10 MR. DOBRY: Objection, speculation.

11 THE COURT: Well, overruled. Do you know whether the  
12 people you spoke -- let me rephrase.

13 You said you spoke to some other people, right?

14 THE WITNESS: Yes.

15 THE COURT: Were the people you spoke to all  
16 associated with this lawsuit?

17 THE WITNESS: Yes.

18 THE COURT: What do you mean by "associated with?"

19 THE WITNESS: That we knew that we all had this  
20 lawsuit and the person I spoke with, we knew that we had signed  
21 into this lawsuit.

22 THE COURT: Well, you had opted into the lawsuit as  
23 plaintiffs.

24 THE WITNESS: No.

25 THE COURT: So I'm not sure what you mean.

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Reyes - Direct

1 THE WITNESS: In other words, what do you refer by  
2 that?

3 THE COURT: You said we had signed into this lawsuit,  
4 how did you sign into the lawsuit?

5 THE WITNESS: Oh, I got the paper and I brought it to  
6 the attorney's office.

7 THE COURT: So this was the paper that allowed you to  
8 opt into the case as a plaintiff, is that right?

9 THE WITNESS: Yes.

10 THE COURT: Go ahead, next question.

11 BY MR. BROWN:

12 Q. So you said earlier that you believe that you could be  
13 terminated, so if you believed that you could be terminated,  
14 why didn't you sign the agreement then?

15 A. Because we all came to the agreement not to sign and we did  
16 not think that they were going to fire all of us.

17 THE COURT: When was this? Do you remember the date?

18 THE WITNESS: It was like around the date that they  
19 gave us the document, two days later, three days later.

20 THE COURT: Do you remember the day?

21 THE WITNESS: No.

22 THE COURT: Do you remember the month?

23 THE WITNESS: July.

24 THE COURT: Go ahead.

25 Q. Do you know anyone who signed the agreement?

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Reyes - Direct

1 MR. DOBRY: Objection, speculative.

2 THE COURT: Overruled.

3 A. Yes.

4 Q. And who do you know that signed the agreement?

5 A. Christian.

6 Q. And who is Christian?

7 A. He was a deliveryman as well, co-worker.

8 THE COURT: How do you know he signed it?

9 THE WITNESS: He signed it because he told me he did.

10 Q. And did you ask him why he signed the agreement?

11 A. Yes, because he said he did not want to lose the job or be  
12 let go.

13 MR. DOBRY: Objection.

14 THE COURT: It does seem to be hearsay. Is there some  
15 non-hearsay reason?

16 MR. BROWN: I believe it's a non-hearsay statement.  
17 He's not saying it for the fact of the matter asserted, this  
18 just proves that.

19 THE COURT: What's it prove? Tell me what it proves  
20 without it being a hearsay reason. I'm dying to hear this.

21 MR. BROWN: His statement is his impression of the  
22 statement from this individual.

23 THE COURT: And why do I need his -- why is his  
24 impression of another person's statement relevant to this  
25 hearing?

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Reyes - Direct

1 MR. BROWN: His impression was that Christian signed  
2 it because he was being forced to sign, so his impression --

3 THE COURT: Why do I care whether I thinks Christian  
4 was forced to sign?

5 MR. BROWN: That's what we're trying to --

6 THE COURT: But you are clearly offering this for  
7 hearsay purpose, right? You're offering this for the truth.  
8 You are. You're asking me to infer the reason for Christian's  
9 actions based on what he told this defendant by accepting that  
10 statement as true, right?

11 MR. BROWN: It's not for the truth of the statement,  
12 it's the fact that it was said at all.

13 THE COURT: Why does the fact that it was said have  
14 any bearing on this hearing?

15 MR. BROWN: The fact that this person was clearly felt  
16 intimidated.

17 THE COURT: And that is clear because of what he said  
18 to the witness, right?

19 MR. BROWN: That's correct.

20 THE COURT: So if I accept the truth of what he said  
21 to the witness, then he was clearly intimidated.

22 MR. BROWN: For example, if there was a witness to a  
23 car accident and they heard someone scream, the scream is not  
24 hearsay because it's the reaction.

25 THE COURT: The scream is not hearsay because it's not



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Reyes - Cross

1 words, but if there were words it would be an excited  
2 utterance, it might be a present sense impression, it might be  
3 a lot of things, but I don't think that you're offering this as  
4 that. It seems to me you're offering this for the truth.

5 If you want to call Christian, let's call Christian,  
6 but he can't testify for Christian. This is not a trial so the  
7 rules of evidence don't strictly apply, but I don't think it's  
8 reliable, and for those reasons I think the hearsay rule should  
9 apply here. So let's move on.

10 MR. BROWN: Okay.

11 Q. Do you know any other employees that signed the agreement?

12 A. No.

13 MR. BROWN: I have no further questions for this  
14 witness.

15 THE COURT: Cross-examination.

16 CROSS-EXAMINATION

17 BY MR. DOBRY:

18 Q. Good afternoon, Mr. Reyes.

19 When you were hired by BTB Events and Celebrations,  
20 can you say again what your job position was, your position  
21 was?

22 A. To make deliveries.

23 Q. And you testified that about six months ago your position  
24 changed, is that correct?

25 A. Yes.

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Reyes - Cross

1 Q. And how do you know that your position changed?

2 A. Because they told us we were no longer called deliverymen  
3 and they made us sign a paper that indicated we were assistant  
4 caterers.

5 THE COURT: Who is "they?"

6 THE WITNESS: The employees in the office.

7 THE COURT: Who? They all said it in chorus like a  
8 singing group? Who said this to you?

9 THE WITNESS: I did not sign that paper that day  
10 because it was a day off for me, but everyone else told me what  
11 had happened.

12 THE COURT: That's not my question, my question is  
13 who -- you said they told us we were no longer called  
14 deliverymen. Who? Who told you that?

15 THE WITNESS: They didn't specify, they just said that  
16 on paper.

17 THE COURT: Well, who is "they?"

18 THE WITNESS: The managers.

19 THE COURT: And so the managers told you to read the  
20 paper?

21 THE WITNESS: No, I read the paper through another  
22 employee who had brought it to his attorney.

23 THE COURT: When you said they told us that we were no  
24 longer called deliverymen, nobody actually told you that, is  
25 that correct?

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Reyes - Cross

1 THE WITNESS: No.

2 THE COURT: So you heard that from a co-worker, is  
3 that where you heard it?

4 THE WITNESS: Yes.

5 THE COURT: Now was there some document that said the  
6 same thing?

7 THE WITNESS: Yes.

8 THE COURT: Where is that document?

9 THE WITNESS: That document was given to those who  
10 signed it and then gave it in, but I never got -- I never  
11 signed that document.

12 THE COURT: Did you ever receive that document?

13 THE WITNESS: No.

14 THE COURT: Did you ever look at it?

15 THE WITNESS: Yes, personally, yes.

16 THE COURT: And how did you come to look at it?

17 THE WITNESS: By the co-worker that took it.

18 THE COURT: Okay. Go ahead. Next question.

19 BY MR. DOBRY:

20 Q. What is the name of the co-worker that showed you this  
21 document?

22 A. I don't remember the name.

23 Q. Do you know if it is one of the other plaintiffs in this  
24 case that showed that you document?

25 A. I think so.

IAiTHERH

Reyes - Cross

1 Q. Was it Ramon Hernandez that showed you the document?

2 A. No.

3 Q. Was it Constantino Hernandez that showed you the document?

4 A. No.

5 THE COURT: Do you know the name of the person who  
6 showed you the document?

7 THE WITNESS: No, no, I don't remember the name.

8 Q. So you don't know if it's Mauro Teutle that showed you the  
9 document?

10 A. It could be, but I don't remember the name very well.

11 THE COURT: Well, do you remember the person's face?

12 THE WITNESS: Yes.

13 THE COURT: So you have a distinct recollection of who  
14 this person was, you just don't know that person's name?

15 THE WITNESS: Correct.

16 THE COURT: When was the last time you saw this  
17 person?

18 THE WITNESS: It has been two months and a half to  
19 three months.

20 THE COURT: Go ahead.

21 BY MR. DOBRY:

22 Q. So that person who showed you this document wasn't in this  
23 courtroom earlier today?

24 A. Yes.

25 THE COURT: Well --

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Reyes - Cross

1 Q. Yes, they were in this courtroom earlier today or yes, they  
2 were not in this courtroom earlier today?

3 A. Yes. They were here.

4 THE COURT: They were here. It was a person who was  
5 here in this courtroom just a few minutes ago?

6 THE WITNESS: Yes, but I don't remember his name.

7 THE COURT: Go ahead.

8 Q. Earlier you testified that it was not Constantino Hernandez  
9 who showed you the document, correct?

10 A. No, correct.

11 Q. And earlier you received that it wasn't Carlos Gonzalez  
12 that showed you the document, is that correct?

13 A. Correct.

14 Q. And earlier today you testified that it wasn't Mauro Teutle  
15 that showed you the document, is that correct?

16 A. It would be the only other person of which I don't remember  
17 their name that was here.

18 Q. So it was not Jorge Menendez that showed you that document?

19 A. No.

20 Q. Do you recall what specifically was written on that  
21 document?

22 A. The only thing it said was that we had to help the person  
23 packaging, that's all I remember.

24 Q. So you don't remember if it specifically said that your  
25 position had changed by title?

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Reyes - Cross

1 A. Well, the title change was obvious because I was a delivery  
2 person and now I was assistant caterer.

3 THE COURT: That's the point, the document said that  
4 your title had changed?

5 THE WITNESS: Yes.

6 Q. Was that document signed by anyone?

7 A. That I know personally having seen it, I don't know, but I  
8 do know that people did sign it.

9 Q. And by sign it, I'm referring to from the company,  
10 authorizing the document. Did someone from the company, a  
11 management person, perhaps, sign that document?

12 A. No, that I don't know.

13 Q. Who told you that your job title before six months ago was  
14 delivery person?

15 A. The person who hired me explained to me what my job was  
16 when she hired me, and she said that I would be doing  
17 deliveries.

18 Q. So you don't know if your official title with the company  
19 was delivery person?

20 A. She's the one who said that what I was going to be doing,  
21 and deliveries is all I did while I worked there.

22 Q. But no one told you that your official title as an employee  
23 of BTB Events and Celebrations is, quote, "delivery person?"

24 A. Maria.

25 Q. Is it possible that your official title could have been

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Reyes - Cross

1 catering assistant but people referred to it as delivery?

2 A. I doubt it, I don't think so.

3 Q. Prior to six months ago, did you ever go into a client's  
4 business location?

5 A. Of a client, in what sense? I don't understand the  
6 question.

7 Q. When you were bringing food to a client's location, to a  
8 purchaser's location, did you ever go into their business or  
9 their store, their office?

10 A. Yes.

11 Q. Did you ever set up the food or place the food out on  
12 perhaps a table or a buffet?

13 A. Yes, that was my job.

14 Q. So that job activity wasn't created or added six months  
15 ago?

16 A. Okay.

17 Q. So when earlier you testified --

18 THE COURT: No, that's a question. Is that correct?

19 THE WITNESS: In what sense is it a question?

20 THE COURT: He's asking you is that correct.

21 THE WITNESS: Yes.

22 Q. So when you testified earlier that this document that  
23 was -- apparently you saw from another employee said that you  
24 were now supposed to go into a person's place of business, that  
25 simply is not true, correct?

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Reyes - Cross

1 A. I didn't understand the way he was explaining what it was,  
2 what I did understand was that my job was doing deliveries and  
3 that was the job that I was doing.

4 Q. So your job functions didn't change six months ago?

5 A. As far as setting up, bringing food inside the businesses,  
6 no, but as in bringing business, yes.

7 THE COURT: What do you mean bringing business?

8 THE WITNESS: Not in bringing business, but in the  
9 place where the business was happening where we were at, there  
10 we had to do other jobs that we were not supposed to do.

11 Q. What other jobs were you not supposed to do?

12 A. Like, for example, cutting lemons or having to do certain  
13 things for deliveries that when I started I don't have to do,  
14 it was never explained to me.

15 Q. What makes you think you weren't supposed to do those  
16 things?

17 A. Because when Maria hired me she only explained that my job  
18 was to bring the food from the store to client, and that was  
19 all.

20 Q. Is it possible that this document that someone showed you  
21 was a training document?

22 A. No.

23 Q. And how is that not possible?

24 THE COURT: I'm not sure how anyone could explain how  
25 something is not possible. Let's move on.



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Reyes - Cross

1 Q. Is it correct you testified earlier you last saw Ms. Puppo  
2 on July 13, 2018?

3 A. Yes.

4 THE COURT: Do you know her as Puppo?

5 THE WITNESS: It's Gina, no? No.

6 THE COURT: I think it's not correct that he testified  
7 that -- he didn't say that. So characterize his testimony  
8 correctly and then you can ask him to affirm or qualify.

9 MR. DOBRY: Yes, your Honor.

10 Q. Earlier did you testify that the last time you saw Gina was  
11 July 13, 2018?

12 A. Yes.

13 Q. And is it correct that earlier you testified that Gina  
14 spoke to you and a group of other co-workers?

15 A. Yes.

16 Q. How many co-workers were with you when Gina was speaking to  
17 you?

18 A. Seven.

19 Q. Is it possible that there were more than seven people?

20 A. At the moment that she was talking to us it was just seven,  
21 eight counting me.

22 Q. Who are those seven people?

23 A. Co-workers, delivery guys.

24 THE COURT: Do you know their names?

25 THE WITNESS: Yes.

IAiTHERH

Reyes - Cross

1 Q. What are the seven people's names?

2 A. From who I remember that were present, there was  
3 Constantino, Susana, Christian, Ali, Kenneth, and the others I  
4 don't remember their names too well, there were two more men.

5 Q. What did Gina say when she first started speaking to you on  
6 July 13?

7 A. She just said that she was going to give us a document and  
8 that she needed us to sign it.

9 Q. And do you recall what that document was?

10 A. Yes, I read it. It's the one that was handed to me just  
11 now.

12 THE COURT: Plaintiff's Exhibit 1, he testified to  
13 that.

14 MR. BROWN: Can I clarify, your Honor, if Plaintiff's  
15 Exhibit 1 is one or two pages?

16 THE COURT: You can ask him. Mine is only one.  
17 What's in your binder?

18 THE WITNESS: It's two.

19 THE COURT: So is there a reason why the witness has  
20 one document and I have a different one?

21 MR. BROWN: I think that might have been an error in  
22 the binder. We have no objection to the two pages in, but I  
23 was only asking questions about the first page during my  
24 direct.

25 THE COURT: But going forward let's make it clear if

IAiTHERH

Reyes - Cross

1 you are only using one page of the document and you wanted the  
2 whole document in, we have to clarify the whole document is in.  
3 It's a two-page document and you showed him which of the two  
4 pages?

5 MR. BROWN: Just the first page.

6 THE COURT: Go ahead.

7 BY MR. DOBRY:

8 Q. Have you seen the second page of Plaintiff's Exhibit 1  
9 before today?

10 A. Yes.

11 Q. When did you see that document?

12 A. The same day.

13 Q. So Gina showed you more than just the first page of  
14 Plaintiff's Exhibit 1 on July 13?

15 MR. BROWN: Your Honor, you don't have a copy of --

16 A. Yes.

17 Q. So earlier when you testified --

18 THE COURT: Go ahead, don't worry about it.

19 Q. Earlier when you testified that she only provided you with  
20 that first page, that isn't correct, correct?

21 A. He only asked me about one page, not how many pages there  
22 were.

23 Q. So just to clarify, is it correct that Gina showed you more  
24 than one document, being -- she showed you more than just the  
25 first page?

IAiTHERH

Reyes - Cross

1 A. She gave me the two sheets.

2 Q. Can you please describe what the second page of Plaintiff's  
3 Exhibit 1 is.

4 A. From what I understood when I read it, it was like the  
5 rules of the job. That was all, rules of the job.

6 Q. So because she gave you a document that you describe as  
7 being the rules of your job, is it possible that she discussed  
8 employment policies with you at that meeting?

9 A. No, she only spoke about the first page. When she wanted  
10 to -- or spoke, I was no longer in the store, I was doing a  
11 delivery.

12 Q. So you were not present for the entire discussion of Gina?

13 A. Just about the first page, and I read it on my own also.

14 Q. So you were able to take the first page with you outside of  
15 the discussion?

16 A. Yes, because there was a co-worker who also had to do some  
17 deliveries. He asked her if he could take the paper, and she  
18 said yes, but bring it back to me tomorrow signed.

19 Q. Who was that individual who told you that?

20 A. Not that they told me, I was there when they said it.

21 THE COURT: Who said it?

22 THE WITNESS: That was the other co-worker, his name  
23 is Orlando.

24 Q. What day of the week is July 13, 2018?

25 A. If I remember correctly, it was a Thursday or Friday.

IAiTHERH

Reyes - Cross

1 MR. DOBRY: Your Honor, I request the Court take  
2 judicial notice that July 13, 2018 was a Friday.

3 THE COURT: I can look it up, but I haven't yet. But  
4 all right. Do you have any further questions?

5 MR. DOBRY: Yes, I do, your Honor.

6 Q. Assuming July 13, 2018 is a Friday, that would make the  
7 following day a Saturday, correct?

8 A. Correct.

9 Q. Were you supposed to work for Between the Bread on July 14,  
10 that Saturday?

11 A. No.

12 Q. Do you generally work Saturdays for Between the Bread  
13 events and celebrations?

14 A. No.

15 Q. So why would Gina say to hand back the documents the  
16 following day if no one was going to be working?

17 A. Because maybe she did not know it was Saturday. And for  
18 the following day, maybe she was referring to Monday.

19 Q. But you were not required to sign either the first page or  
20 the second page of Plaintiff's Exhibit 1 on July 13, is that  
21 correct?

22 A. Yes. It was like an obligation. She told me it was an  
23 obligation.

24 THE COURT: And she told you what would happen if you  
25 didn't sign it?

IAiTHERH

Reyes - Cross

1 THE WITNESS: She told us --

2 THE INTERPRETER: Sorry, your Honor.

3 THE COURT: Did she tell you what would happen if you  
4 didn't sign it?

5 THE WITNESS: She did not specify what would happen if  
6 I didn't sign it, but I thought that if I didn't sign it they  
7 would fire me.

8 THE COURT: That was based on something she said or  
9 something she did or something else?

10 THE WITNESS: Yes, by her attitude, the way she spoke  
11 about it, the way she made us see things, and from what I read  
12 is how I understood that that was the case.

13 Q. So you understood what was written on that first page of  
14 Plaintiff's Exhibit 1.

15 A. Yes, because I read it.

16 Q. I'm going to show you -- I just handed the witness what is  
17 listed as Defendant's Exhibit 4, the declaration of Jose Reyes.

18 THE COURT: Defendant Exhibit 4, go ahead.

19 Q. Mr. Reyes, have you seen that document before?

20 A. Yes.

21 Q. In paragraph two of your declaration does it say that --  
22 did you say or declare that Gina distributed the document to us  
23 one by one?

24 A. Yes, we were in a group and she gave it one by one to each  
25 person in the group.

IAiTHERH

Reyes - Cross

1 Q. But she didn't speak to you about that document one by one?

2 A. No.

3 Q. And earlier today is it correct that you testified you  
4 understood what that document was during the discussion with  
5 Gina?

6 A. No, I did not say that.

7 Q. You did not testify earlier that you were able to  
8 understand the contents of the arbitration agreement that is  
9 the first page of Plaintiff's Exhibit 1?

10 A. Yes, but not that she explained it, I understood it myself  
11 after I read it.

12 Q. So you understood what that document was on July 13, 2018,  
13 correct?

14 A. From what I read, it was referring to it if I had any  
15 problem with the company that I could not sue or we could get  
16 to some agreement and that was all.

17 Q. Earlier today I believe you testified that you felt it was  
18 required to -- you were required to sign that document because  
19 of the word obligation, is that correct?

20 A. Yes.

21 Q. Did Gina specifically tell you or the group that you had to  
22 sign all the documents that she distributed?

23 A. Yes, obviously she told us that we had to sign it and  
24 submit it.

25 Q. But you didn't have to sign it during that meeting with

IAiTHERH

Reyes - Cross

1 Gina, is that correct?

2 A. I had to sign it, but I didn't sign it, and I will repeat  
3 it, because I had to go out.

4 Q. And did you ever sign that agreement?

5 A. No, because we came to an agreement, the people who were  
6 suing, that we were not going to sign it until we showed it to  
7 the attorney.

8 MR. DOBRY: Your Honor, I would like to move  
9 Defendant's Exhibit 4 into evidence.

10 THE COURT: It's already a court document, right?

11 MR. DOBRY: Correct.

12 THE COURT: I don't need it in evidence. Go ahead.

13 BY MR. DOBRY:

14 Q. When did you first learn about this lawsuit, Mr. Reyes?

15 A. When I got the paper at my house.

16 THE COURT: When was that, what month, what year?

17 THE WITNESS: That was June or July.

18 THE COURT: Before you were presented with the  
19 document that is Exhibit 1, correct?

20 THE WITNESS: Yes, correct.

21 MR. DOBRY: Your Honor, I'm presenting what is listed  
22 as Defense Exhibit 9 to the witness.

23 Q. Please take a moment and review.

24 THE COURT: Do you recognize it?

25 THE WITNESS: Yes.



IAiTHERH

Reyes - Cross

1 THE COURT: What is it?

2 THE WITNESS: This is what came to my house, and that  
3 if I wanted to be part of the lawsuit I had to sign it and give  
4 him the papers.

5 THE COURT: Next question.

6 BY MR. DOBRY:

7 Q. I'm handing the witness what is listed as Exhibit 10.

8 Have you seen that document before, Mr. Reyes?

9 A. Yes, it was the one I signed.

10 Q. And what is the date that you signed this document?

11 A. June 26 of 2018. June 26.

12 Q. Why did you sign this document on June 26, 2018?

13 A. Because that's when I brought it -- when I went to the  
14 attorneys.

15 Q. Did you receive the notice of this lawsuit before you went  
16 to attorneys and signed this document in the mail?

17 A. The notification of this lawsuit or this paper?

18 Q. The notification of the lawsuit.

19 A. Is that a paper or what?

20 Q. It is the document that I provided you, it is Defendant's  
21 Exhibit 9.

22 A. That's what came to my house. It was the first document  
23 that made me aware of this lawsuit.

24 Q. So by -- is it correct by June 26, 2018, you had decided  
25 that you desired to opt into this lawsuit?

IAiTHERH

Reyes - Cross

1 A. Yes, correct.

2 Q. Where did you sign this document?

3 A. At the attorney's office.

4 Q. Did you contact -- do you know when this document was  
5 submitted to the Court that you signed?

6 A. No.

7 Q. But either way, it's correct that you decided you were  
8 going to join this lawsuit before July 13, 2018?

9 A. Yes, of course.

10 Q. Were you prevented from joining this lawsuit because of the  
11 discussion with Gina on July 13, 2018?

12 A. Prevented me -- basically what prevented me was the paper.

13 Q. Have you been prevented from being involved in this  
14 lawsuit?

15 A. No.

16 Q. Do you know if -- did your attorneys tell you that the  
17 consent form was filed?

18 MR. BROWN: Objection.

19 THE COURT: Were you aware -- I don't care about this.

20 All right. So you joined this lawsuit before you were  
21 given the paper that is Exhibit 1, right?

22 THE WITNESS: Correct.

23 THE COURT: And you said that you were told or you  
24 understood that you would be fired if you didn't sign that  
25 agreement that Gina gave you, correct?

IAiTHERH

Reyes - Cross

1 THE WITNESS: Of course.

2 THE COURT: Of course. Who told you that? Gina or  
3 someone else?

4 THE WITNESS: That was through how I understood the  
5 manner that she was talking to me.

6 THE COURT: So was it the words or the manner?

7 THE WITNESS: Both.

8 THE COURT: So what were the words that she used that  
9 led you to conclude that you would be fired if you didn't sign  
10 the agreement that is Plaintiff's Exhibit 1?

11 THE WITNESS: Because she was utilizing a rude manner  
12 of talking to us.

13 THE COURT: Listen to the question. What were the  
14 words? You said it was her words and the manner, I asked you  
15 what were the words and you described the manner. So tell me  
16 the words.

17 THE WITNESS: Obligation, obligatory.

18 THE COURT: She said it was your obligation to sign  
19 this document?

20 THE WITNESS: Yes.

21 THE COURT: She had it was obligatory.

22 THE WITNESS: Yes.

23 THE COURT: Did she tell you what would happen if you  
24 didn't?

25 THE WITNESS: I had already gone. She did not specify

IAiTHERH

Reyes - Cross

1 to me, no.

2 THE COURT: All right. Next question. Anything else?

3 BY MR. DOBRY:

4 Q. Were you fired when you did not sign that agreement?

5 A. No, because she never talked to me again.

6 THE COURT: Well, did you sign the document?

7 THE WITNESS: No, because we came to the agreement  
8 that we were not going to sign it.

9 THE COURT: Were you fired as a result of that?

10 THE WITNESS: No, but there were other things that  
11 happened, like retaliation.

12 THE COURT: Just answer my questions. It works a lot  
13 easier if you answer the questions. You were not fired as a  
14 result of not signing the document, right?

15 THE WITNESS: That's correct.

16 THE COURT: When did you stop working for the company?

17 THE WITNESS: August 25th.

18 THE COURT: Were you fired or did you leave on your  
19 own accord?

20 THE WITNESS: I left.

21 THE COURT: All right. Next question.

22 MR. DOBRY: No further questions, your Honor.

23 THE COURT: Anything else?

24 MR. BROWN: I just have two questions.

25 (Continued on next page)

IAiTHERH

Reyes - Redirect

1 REDIRECT EXAMINATION

2 BY MR. BROWN:

3 Q. You testified earlier that Christian had signed the  
4 arbitration agreement.

5 A. Correct.

6 Q. And Christian was at that July 13 meeting with you as well,  
7 he was one of the eight people?

8 MR. DOBRY: Objection, mischaracterization of  
9 testimony.

10 THE COURT: Seven versus eight?

11 MR. DOBRY: Yes.

12 MR. BROWN: He said seven people, with him included  
13 eight.

14 THE COURT: I don't think he said that, actually, but  
15 in any event, I don't care what number of people were there,  
16 really. Christian was one of the people that was at the  
17 meeting that you were at on July 13, 2018, correct?

18 THE WITNESS: Yes, correct.

19 THE COURT: Okay.

20 MR. BROWN: Your Honor, I would like to respectfully  
21 request a reconsideration on the previous position of the Court  
22 regarding hearsay statements. I understand that the Court  
23 ruled they are hearsay, but because this is a hearing I think  
24 it would be valuable to at least hear the testimony and the  
25 Court could give it whatever weight it decides.

IAiTHERH

1 THE COURT: I'm not likely to give it very much  
2 weight. It's his inference to what Christian meant or what he  
3 was thinking. So why don't you make an attorney's proffer to  
4 what he will say, what is he going to say?

5 MR. BROWN: From my discussions with the client, he  
6 would say Christian discussed with him that the reason he  
7 signed the agreement is because he would be fearful that he  
8 would be terminated and he previously wanted to join the  
9 action.

10 THE COURT: You could have subpoenaed Christian to be  
11 here, right?

12 MR. BROWN: This was recently discovered information.

13 THE COURT: Overruled. Anything else?

14 MR. BROWN: That's all.

15 THE COURT: Okay. You can step down. Thank you.

16 Witness.

17 MR. BROWN: Next witness is Constantino.

18 THE COURT: Let's go quickly, because if we'll take an  
19 hour and 15 minutes with each witness, we're not going to  
20 finish this today. So I'm hoping we can move through these  
21 more efficiently.

22 MR. DOBRY: Your Honor, the witness on the bench is  
23 speaking with the remaining witnesses with plaintiffs' counsel.  
24 I prefer that to stop.

25 THE COURT: Mr. Brown, did you hear what Mr. Dobry

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Hernandez - Direct

1 said? The witness who was just on the stand is now discussing  
2 his testimony with other witnesses or potential witnesses,  
3 so --

4 MR. BROWN: Do you want me to separate them?

5 THE COURT: Nobody asked me to direct them or  
6 sequester anyone outside the courtroom. You could cross them  
7 all on this, I suppose.

8 CONSTANTINO HERNANDEZ,

9 called as a witness by the Plaintiffs,

10 having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. BROWN:

13 THE COURT: Could you state your name and spell your  
14 name for the record.

15 THE WITNESS: Constantino Hernandez,

16 C-O-N-S-T-A-N-T-I-N-O H-E-R-N-A-N-D-E-Z.

17 THE COURT: Okay. Go ahead.

18 BY MR. BROWN:

19 Q. When did you first start working for Between the Bread?

20 A. I started in October of 2014.

21 Q. And what was your position there?

22 A. Yes, delivery guy.

23 Q. And did your position ever change throughout your  
24 employment?

25 A. No.

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Hernandez - Direct

1 Q. Are you still employed by Between the Bread?

2 A. Yes.

3 Q. In front of you is Plaintiff's Exhibit 1, the first page.

4 Can you please review that document. Just the first page.

5 A. Yes.

6 Q. Have you ever seen this document before today?

7 A. Yes, I saw it when it was given to us by Ms. Gina to sign.

8 Q. And when was that?

9 A. It was July 13, and on July 17 she gave it to me again.

10 Q. And before July 13 had you seen that document before?

11 A. No.

12 Q. So July 13 was the first time that you had seen this  
13 document?

14 A. Yes.

15 Q. And you mentioned that the document was given to you by  
16 someone named Gina?

17 A. Yes, Gina who works at here, Between the Bread.

18 Q. And do you know what Gina's position is at Between the  
19 Bread?

20 A. I don't know exactly what her position is, but I know that  
21 she works there because we have always had to bring like papers  
22 to her at the office.

23 Q. Do you know what she did at Between the Bread, what type of  
24 things she would do?

25 A. Well, no, I know that she would just receive documents and



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Hernandez - Direct

1 sometimes she will go to the stores, interview people, just  
2 that.

3 Q. So would you say she's in charge of like the documentation,  
4 the employment documentation?

5 A. Yes.

6 Q. Do you know approximately what time of day she gave the  
7 document out to you?

8 A. Approximately around 10, 11 of the morning.

9 Q. And when you received the document, were you by yourself or  
10 were you with a group of people?

11 MR. DOBRY: Objection, your Honor, leading.

12 A. No, there were a group people.

13 THE COURT: Overruled. A group of people. Okay, how  
14 big a group?

15 THE WITNESS: Around seven to eight people.

16 Q. And do you know who -- can you --

17 THE COURT: How many of those people did you know?

18 THE WITNESS: I knew all of them.

19 THE COURT: Can you tell me the names of the people  
20 you remember being there?

21 THE WITNESS: There was Jose Reyes, there was -- I  
22 don't remember the names too well. Christian -- Christian, I  
23 don't remember his last name. Carlos.

24 THE COURT: Do you remember his last name?

25 THE WITNESS: I believe it's Hernandez, but honestly I

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Hernandez - Direct

1 don't remember.

2 THE COURT: Who else?

3 THE WITNESS: There was Rubin.

4 THE COURT: Do you know his last name?

5 THE WITNESS: No, I just remember the name.

6 THE COURT: Anyone else?

7 THE WITNESS: Gemaro.

8 THE COURT: Do you know his last name?

9 THE WITNESS: No.

10 THE COURT: The name was Gemaro?

11 THE WITNESS: Gemaro.

12 THE COURT: How do you spell it?

13 THE WITNESS: G-E-M-A-R-O.

14 THE COURT: Anyone else?

15 THE WITNESS: I don't remember the names too well.

16 THE COURT: If there is anyone else, let me know. If  
17 you don't remember anyone else, that's enough.

18 THE WITNESS: There was Mauro.

19 THE COURT: Was it all men or were there any women?

20 THE WITNESS: Yes, and also Susana was there.

21 THE COURT: That was the only woman besides Gina?

22 THE WITNESS: Yes.

23 THE COURT: Go ahead, next question.

24 BY MR. DOBRY:

25 Q. Did all these individuals have the same job position as

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Hernandez - Direct

1 you?

2 A. Yes.

3 Q. And did Gina say anything before handing the agreement to  
4 you?

5 A. Yes, she told us that she was going to give us these  
6 documents and we had to sign them.

7 Q. And then after that, did she give the document to you?

8 A. Yes.

9 Q. Did she say anything after she gave the document to you?

10 A. That that was -- nothing would hurt or anything bad towards  
11 us, and that we had to sign it.

12 THE COURT: She said you had to sign it?

13 THE WITNESS: Yes.

14 Q. And did she tell you this in English or Spanish?

15 A. In Spanish.

16 Q. And she said it to you in Spanish?

17 A. Yes.

18 THE COURT: Do you remember the words, exact words she  
19 used?

20 THE WITNESS: Not exactly.

21 THE COURT: Did she indicate in words what would  
22 happen if you didn't sign it?

23 THE WITNESS: No, no, she didn't say.

24 THE COURT: It you have an understanding as to what  
25 would happen if you didn't sign it?

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Hernandez - Direct

1 THE WITNESS: I did not know anything because  
2 everything was in English.

3 THE COURT: What do you mean everything was in  
4 English?

5 THE WITNESS: Yes, the document she gave us was in  
6 English.

7 THE COURT: But she spoke to you in Spanish, you said,  
8 right?

9 THE WITNESS: Yes, to tell us that we had to sign it,  
10 but she did not read to us any of it like in Spanish.

11 THE COURT: But I'm asking, was there anything that  
12 she told you or anything that you observed that led you to  
13 understand what would happen if you didn't sign it?

14 THE WITNESS: I don't know, but she told us like in a  
15 way that it was like obligatory for us to sign it.

16 THE COURT: And what way was that? Describe it.

17 THE WITNESS: Because someone said if they didn't have  
18 it in Spanish she then said I will bring it to you in Spanish  
19 tomorrow, but she never did, but she said tomorrow, the next  
20 day we had to give it in signed, if not, you give it to me like  
21 that without the signature, but you give me your name.

22 THE COURT: And from that you understood what?

23 THE WITNESS: At the moment I did not understand, but  
24 afterwards with people, with Kenneth, which was another person  
25 who was there, he read it, he knows English well, and he said

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Hernandez - Direct

1 it was not good for us.

2 THE COURT: But I'm asking what she said that led you  
3 to conclude that you would -- well, I'm asking what your  
4 understanding was. I'm asking you to tell me what you  
5 understood the consequences would be if you didn't sign it.

6 THE WITNESS: That they could fire us or something  
7 similar.

8 THE COURT: That was your understanding.

9 THE WITNESS: Yes.

10 THE COURT: Or something similar. What would be  
11 similar to firing?

12 THE WITNESS: Sometimes they give us days off, just  
13 that.

14 THE COURT: Next question.

15 BY MR. BROWN:

16 Q. Did anyone ask any questions after receiving the document  
17 in the group?

18 A. Yes, there were some questions, but Gina individually, I no  
19 longer heard anything.

20 Q. Do you recall any of the questions that were asked?

21 A. No, I don't remember.

22 Q. Then you said that you also received the document again on  
23 July 17 --

24 THE COURT: Wait, between July 13 and July 17, did you  
25 sign the document?

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Hernandez - Direct

1 THE WITNESS: No.

2 THE COURT: Did you have any conversation with Gina  
3 about that between July 13 and July 17?

4 THE WITNESS: No.

5 THE COURT: All right. Go ahead.

6 Q. You said you received the document again July 17, 2018, is  
7 that correct?

8 A. Yes.

9 Q. And can you tell me the circumstances around the second  
10 time she gave you the agreement?

11 A. Ms. Gina asked me again if I had it, if I already signed  
12 it.

13 THE COURT: Wait. Who else was present for this  
14 July 17 meeting?

15 THE WITNESS: Just me.

16 THE COURT: Where was this?

17 THE WITNESS: Right there at the job.

18 THE COURT: You were working at the time?

19 THE WITNESS: Yes.

20 THE COURT: So what were you doing?

21 THE WITNESS: At that moment?

22 THE COURT: Yeah.

23 THE WITNESS: Waiting for my delivery.

24 THE COURT: And so how did you come to encounter her?

25 THE WITNESS: She arrived at the store, she got there.

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Hernandez - Direct

1 THE COURT: And then what happened?

2 THE WITNESS: She asked me if I had it, if I had  
3 already signed it, and I told her that no, and then I told her  
4 no, and she gave it to me again.

5 THE COURT: Okay. Did she say anything else?

6 THE WITNESS: No.

7 THE COURT: Did she say anything about what would  
8 happen if you didn't sign it?

9 THE WITNESS: No, she didn't tell us.

10 THE COURT: Okay. Did she seem angry?

11 THE WITNESS: Yes.

12 THE COURT: In what way did she express or reflect  
13 that she was angry?

14 THE WITNESS: She was very curt with her conversation,  
15 she's like: You don't have it, here it is.

16 THE COURT: Had you dealt with her much before?

17 THE WITNESS: No.

18 THE COURT: How many times had you seen her before?

19 THE WITNESS: I see her -- we see her often.

20 THE COURT: This conversation on July 17, was it in  
21 English or Spanish?

22 THE WITNESS: Spanish.

23 THE COURT: And how is her Spanish?

24 THE WITNESS: It's good.

25 THE COURT: Is she a native speaker, can you tell?

IAiTHERH

Hernandez - Direct

1 THE WITNESS: Could be.

2 THE COURT: Do you know where she learned Spanish?

3 THE WITNESS: No.

4 THE COURT: Do you know whether she's born in this  
5 country or a different country?

6 THE WITNESS: No, I don't.

7 THE COURT: Could you tell from her accent what  
8 country she was from or what country -- well, could you tell  
9 from her accent what type of Spanish she spoke?

10 THE WITNESS: No.

11 THE COURT: She didn't speak like a Spaniard, right?

12 THE WITNESS: No.

13 THE COURT: And did she sound like she was from  
14 Argentina?

15 THE WITNESS: I don't think so.

16 THE COURT: Did she sound like she was Dominican?

17 THE WITNESS: It could be when I think about it now,  
18 but I never really thought about it. It could be that maybe  
19 someone from Puerto Rico.

20 THE COURT: Go ahead.

21 BY MR. BROWN:

22 Q. Did you see her giving the agreement to anyone else on  
23 July 17?

24 A. July 17, no. July 13, yes.

25 THE COURT: We already talked about July 13, right?



IAiTHERH

Hernandez - Direct

1 THE WITNESS: Yes.

2 THE COURT: But nobody else on July 17.

3 THE WITNESS: I did not see.

4 THE COURT: Okay, next question.

5 BY MR. BROWN:

6 Q. Did you discuss the document in front of you with any of  
7 your co-workers after you received it on July 13?

8 A. Yes.

9 Q. And when did you first discuss the document with your  
10 co-workers?

11 A. Immediately after she left, people who knew English, they  
12 commented on what this document was. So then we thought that  
13 that was not good for us, the ones that are part of this  
14 lawsuit.

15 THE COURT: But I only want you to testify to what you  
16 thought or what you knew. Next question.

17 Q. Who was present at the first conversation?

18 A. There was Christian, Kenneth, Christian.

19 THE COURT: Let me put it this way, you had this  
20 meeting on July 13 that Gina was there and the other people you  
21 mentioned before, right?

22 THE WITNESS: Yes.

23 THE COURT: She handed you and others this paper,  
24 right?

25 THE WITNESS: Yes.

IAiTHERH

Hernandez - Direct

1 THE COURT: And then she left?

2 THE WITNESS: Yes.

3 THE COURT: And then you discussed that paper with  
4 other people, is that right?

5 THE WITNESS: Yes.

6 THE COURT: And was it the entire group that had been  
7 there when Gina was there or was it a smaller group?

8 THE WITNESS: We were the same ones.

9 THE COURT: Next question.

10 BY MR. BROWN:

11 Q. And was there any discussion as to whether the people you  
12 were talking with would sign the agreement?

13 MR. DOBRY: Objection, your Honor, to the extent it  
14 calls for hearsay.

15 THE COURT: Well, "was there discussion" doesn't call  
16 for hearsay, that calls for a statement of fact. You can  
17 answer.

18 A. Yes, we all agreed that we were not going to sign it  
19 because we had fear that we might be fired.

20 THE COURT: Just testify about your own thoughts and  
21 concerns. The question was simply was there a discussion,  
22 that's yes or no. Was there a discussion as to whether you  
23 would sign?

24 THE WITNESS: Yes.

25 THE COURT: Next question.

IAiTHERH

Hernandez - Direct

1 BY MR. BROWN:

2 Q. So you said earlier that you were concerned that you were  
3 going to be terminated, and then you said you also did not sign  
4 the agreement. Why didn't you sign the agreement if you were  
5 concerned that you would be terminated?

6 A. Why did I sign it?

7 THE COURT: Why did you not sign it.

8 THE WITNESS: I did not sign it because I did not know  
9 exactly what it was.

10 THE COURT: Next question.

11 Q. Do you know anyone who did sign it?

12 A. Yes.

13 Q. And any catering assistants or delivery people?

14 A. Yes, there was Christian.

15 Q. Do you know anyone else?

16 A. I only saw Christian sign it, but I also found out that  
17 Paul signed it.

18 Q. And were those both people who were present at the July 13  
19 meeting?

20 A. Only Christian.

21 Q. Do you know when Paul received the agreement?

22 A. No, I don't know.

23 MR. BROWN: I have no further questions.

24 THE COURT: Cross-examination.

25 (Continued on next page)

IAiTHERH

Hernandez - Cross

1 CROSS-EXAMINATION

2 BY MR. DAVE:

3 Q. Mr. Hernandez, when did you first learn about this lawsuit?

4 A. When the mail came to my house.

5 Q. I would like you to refer to what is on the table there,  
6 it's Exhibit Number 9. Do you recognize this document, sir?

7 A. Yes, it's the one that came to my house.

8 Q. And is this -- when you received this at home, that is the  
9 first time you learned about this lawsuit, is that correct?

10 A. Yes.

11 Q. And you received this well before the July 13 meeting, is  
12 that correct?

13 A. I don't remember exactly the date I received it.

14 THE COURT: Was it before or after the July 13  
15 meeting?

16 THE WITNESS: Yes, it was before, I think.

17 Q. And looking at Exhibit 9, sir, the last page, the last two  
18 pages, is a form for you to complete, is that correct?

19 A. Exhibit 9, is that correct?

20 Q. This is correct.

21 Was that a yes, sir?

22 A. Yes.

23 Q. I would like to show you what is marked as Defendant's  
24 Exhibit 12. Do you recognize this document, sir?

25 A. Yes.

IAiTHERH

Hernandez - Cross

1 Q. Is that your signature on the line signature?

2 A. Yes.

3 Q. Is this the form that you completed and mailed back to your  
4 attorneys?

5 A. Yes.

6 Q. And you dated this June 22nd, 2018, is that correct?

7 A. Yes.

8 Q. Did you understand what this document meant when you signed  
9 it?

10 A. Yes.

11 Q. What was your understanding?

12 A. My son explained that this was a lawsuit that Ramon  
13 Hernandez made against the company where I work.

14 Q. Did you understand that by signing it you would become part  
15 of the lawsuit?

16 A. Yes.

17 Q. So you understood when you signed that document that you  
18 were then part of this lawsuit.

19 A. Yes.

20 Q. And so you signed it on June 22nd, so that means you  
21 received Exhibit 9 that you reviewed earlier prior to  
22 June 22nd, is that correct?

23 You signed Exhibit 12 on June 22nd. Would it be fair  
24 to say that you received Exhibit 9 on or before June 22nd?

25 A. Which one is 9? Was that the first one you showed me?

IAiTHERH

Hernandez - Cross

1 Q. Yes. On the bottom of each exhibit it says -- Exhibit 9.

2 A. Okay. So then can you repeat the question again?

3 THE COURT: Did you sign number 12 the same day or  
4 earlier as Exhibit 9?

5 You received it after you received that, you received  
6 9 first and signed 12 later, right?

7 THE WITNESS: Yes.

8 THE COURT: Okay, next question.

9 BY MR. DAVE:

10 Q. Sir, I would like you to review what is marked Defendant's  
11 Exhibit 7. Do you recognize this document, sir?

12 THE COURT: Turn to the second page.

13 THE WITNESS: I think so, I don't remember too well.

14 THE COURT: Is that your signature on the second page?

15 THE WITNESS: Yes.

16 Q. Sir, do you read English?

17 A. Very little.

18 Q. This is your declaration, correct, sir?

19 THE COURT: Do you recognize this to be your  
20 declaration in this case?

21 THE WITNESS: I don't remember this document too well.

22 THE COURT: Well, is that your signature on the second  
23 page?

24 THE WITNESS: Yes, yes.

25 THE COURT: Did somebody translate this into Spanish

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Hernandez - Cross

1 for you?

2 THE WITNESS: It's that I don't remember who gave me  
3 this.

4 BY MR. DAVE:

5 Q. You didn't prepare this document, is that correct?

6 A. No.

7 Q. But you did sign it, you agreed to that?

8 A. I don't remember signing this.

9 THE COURT: Is that your signature, yes or no?

10 THE WITNESS: That is my name but my signature is not  
11 here.

12 THE COURT: That's not your signature.

13 THE WITNESS: No, it's just my name there.

14 THE COURT: Okay. We have a problem here, right?

15 MR. DAVE: Yes, your Honor, we have a problem.

16 MR. DOBRY: Filed with the Court representing a  
17 declaration of Constantino Hernandez.

18 THE COURT: I understand that. I want you to sign  
19 your name here.

20 So you have got -- which is your signature? Put an X  
21 next to your signature.

22 Then you wrote your name in letters underneath,  
23 printed it, you printed your name underneath, correct?

24 THE WITNESS: Yes.

25 THE COURT: I will mark this as Court Exhibit 1 and

IAiTHERH

Hernandez - Cross

1 allow the lawyers to take a look at this.

2           Somebody better have an explanation for me how I have  
3 a court exhibit that has been docketed that has presumed under  
4 penalty of perjury what purports to be a signature line that  
5 isn't a signature line from a witness who says that he doesn't  
6 recall seeing this document.

7           MR. DAVE: Your Honor, I add Exhibit 12 has been  
8 admitted, the witness testified that was his signature on 12  
9 and denied it was his signature on Exhibit 7, and that the  
10 signature on Exhibit 12 resembles the signature on Court  
11 Exhibit 1.

12           THE COURT: I think that's a fair characterization.  
13 Would you take a crack at that one?

14           MR. BROWN: I'm kind of confused myself. I went over  
15 this. I didn't personally, because I don't speak Spanish,  
16 speak with him about this part of it, but I don't see any  
17 reason why he wouldn't recognize it.

18           THE COURT: Wait a minute. You're saying that this  
19 document, which is now Exhibit 7, was signed by this witness?

20           MR. BROWN: Yes.

21           THE COURT: That's what you're saying? Even though --

22           MR. BROWN: I have no reason to believe otherwise.

23           THE COURT: Well, take a look at the signature. That  
24 might be one reason to believe otherwise, the testimony of the  
25 witness might be another reason to believe otherwise because he



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Hernandez - Cross

1 doesn't remember signing this.

2 Do you remember signing this document, Exhibit 7?

3 THE WITNESS: No.

4 THE COURT: Do you remember reading this document  
5 prior to today?

6 THE WITNESS: No, I'm reading it right now.

7 THE COURT: This strikes me as problematic.

8 So anything else for this witness?

9 MR. DAVE: Yes, your Honor. I do have a few more  
10 questions with this witness. Whether we can reserve this issue  
11 for later --

12 THE COURT: Well, it's potentially going to be a  
13 sanctions issue or grievance committee issue, contempt issue,  
14 might be a lot of issues.

15 MR. DAVE: Thank you.

16 BY MR. DAVE:

17 Q. Now Mr. Hernandez, you testified that you received  
18 Exhibit 1 on July 13 for the first time, is that correct?

19 A. Yes.

20 Q. And I would like you to refer to Exhibit 1. It's a  
21 two-page document, is that correct, sir?

22 A. Yes.

23 Q. I would like to refer to page 2. Do you recognize page 2?

24 A. Yes.

25 Q. What is this document, sir?

IAiTHERH

Hernandez - Cross

1 A. I cannot understand it too well.

2 THE COURT: Have you seen it before?

3 THE WITNESS: Page 2?

4 THE COURT: Yeah.

5 THE WITNESS: Yes. Yes.

6 THE COURT: When did you first see it?

7 THE WITNESS: Ms. Gina gave it to us together.

8 THE COURT: On July 13?

9 THE WITNESS: Yes.

10 THE COURT: Did you sign this one?

11 THE WITNESS: No.

12 Q. How did you come to encounter Ms. Gina on July 13?

13 A. She arrived at the store, we were there waiting for our  
14 delivery, and she arrived from the office over here to the  
15 store with the documents she wanted us to sign.

16 Q. Where in the store were you waiting for your deliveries?

17 A. We're always at the entrance hallway, all of us, waiting.

18 Q. And was there a prescheduled meeting with Gina prior to her  
19 showing up?

20 A. No.

21 Q. And when you and the others met with Gina, she went over  
22 these documents with you, is that correct?

23 A. She gave us the documents.

24 Q. Well --

25 THE COURT: Did she discuss them with you?

IAiTHERH

Hernandez - Cross

1 THE WITNESS: With me, no, she spoke with all of us.

2 Q. Well, when she spoke with all of you, did she explain the  
3 documents, what they were?

4 A. She told us just that they were documents that we had to  
5 sign and there was nothing that would jeopardize us, that just  
6 to sign it.

7 Q. How long was this conversation with Gina?

8 A. With everyone it was brief.

9 Q. Less than five minutes?

10 A. Yes.

11 Q. Were you there for the entire time that Gina spoke?

12 A. Yes.

13 Q. What did you do after speaking with Gina?

14 A. I just went up to the side, because other people were  
15 asking her questions, so I just went away from there.

16 Q. And did you just stay outside or did you leave for a  
17 delivery after that?

18 A. No, I stayed for some more time in there.

19 Q. How long did you stay before you left the building?

20 A. I don't remember exactly, but she left before.

21 Q. She left before you left?

22 A. Yes.

23 Q. Do you know why Gina was there that day?

24 A. No.

25 Q. And on July 17, when you met Gina again, that was not a

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Hernandez - Cross

1 scheduled meeting, is that correct?

2 A. No.

3 THE COURT: On the 17th of July did Gina distribute  
4 the arbitration agreement to anyone else besides you?

5 THE WITNESS: I did not see her give it to any other  
6 person, I was the only one there and she gave it to me.

7 Q. And you didn't ask Gina any questions about the documents  
8 either on July 13 or July 17, is that correct?

9 A. No.

10 Q. And Gina never said that if you didn't sign you would be  
11 fired, is that correct?

12 A. No, she didn't say.

13 Q. And Gina is not your supervisor, is that correct?

14 A. No, she's not.

15 Q. And she does not prepare your work schedule, is that  
16 correct?

17 A. That I'm aware of, no.

18 Q. And you testified Christian, and you don't know his last  
19 name, was present on July 13, is that correct?

20 A. Yes.

21 Q. Was he a new employee, was he hired that day?

22 A. He was just there for a short time. It had been a few  
23 weeks.

24 Q. Had you seen him prior to July 13?

25 A. Yes, he worked there with us.

IAiTHERH

Hernandez - Cross

1 Q. Do you know whether Christian ever received Exhibit 9 in  
2 the mail?

3 A. I don't know.

4 Q. You testified that you did not sign the page 1 of  
5 Exhibit 1, is that correct?

6 A. No, I did not sign it.

7 Q. Were you concerned that you might be fired if you didn't  
8 sign?

9 A. Yes.

10 Q. And so then why didn't you sign it if you were concerned  
11 that you might be fired?

12 A. Well, the group that's part of the lawsuit, we all agreed,  
13 because for me I thought it would be harder for them to fire  
14 everyone together.

15 Q. So you felt that if others didn't sign that they wouldn't  
16 fire you, is that correct?

17 A. No.

18 Can you repeat the question? I did not understand.

19 Q. Sure. I want to make sure you understand.

20 The reason you didn't sign it is because there were  
21 others who were willing not to sign the document?

22 A. Yes.

23 Q. And at that point you understood that you very likely will  
24 not be fired?

25 A. Not exactly, but I thought it was something better.

IAiTHERH

Teutle - Direct

1 Q. And you're still employed by the company today, correct?

2 A. Yes.

3 Q. Do you know anyone, any one person who did not sign and was  
4 fired by the company?

5 A. No.

6 MR. DAVE: No further questions, your Honor.

7 THE COURT: Any redirect?

8 MR. BROWN: No, your Honor.

9 THE COURT: You can step down. Thank you.

10 Next witness.

11 MR. BROWN: Mauro Teutle.

12 (Pause)

13 THE COURT: Where is the witness and the lawyer?

14 MR. DAVE: It appears the witness is nervous.

15 THE COURT: What is going on? I can't be taking a  
16 five-minute break every time we change witnesses.

17 MR. BROWN: Sorry, your Honor, I was having a  
18 discussion with Mr. --

19 THE COURT: Not on my time. Where is the witness?

20 MAURO TEUTLE,

21 called as a witness by the Plaintiffs,

22 having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. BROWN:

25 THE COURT: State your name and spell it for the

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Teutle - Direct

1 record.

2 THE WITNESS: Mauro Teutle, M-A-U-R-O T-E-U-T-L-E.

3 THE COURT: Let's go.

4 BY MR. BROWN:

5 Q. When did you first start working for Between the Bread?

6 A. Three years.

7 Q. And what was your position there?

8 A. Delivery boy.

9 Q. And did your position ever change?

10 A. No, I still have the same position, delivery boy.

11 THE COURT: You still work for Between the Bread?

12 THE WITNESS: What was that?

13 THE COURT: Do you still work for Between the Bread?

14 THE WITNESS: Yes.

15 Q. In front of you is a document that was marked as

16 Plaintiff's Exhibit 1, the first page of that exhibit.

17 Have you ever seen this document before today?

18 A. No, I saw it approximately three months ago.

19 Q. Do you know the approximate date that you first saw this  
20 document?

21 A. July 13.

22 Q. And do you recall who gave you this document on July 13?

23 A. Yes, a lady who I understood to be part of human resources.

24 Q. And do you know that person's name?

25 A. I don't know her name.

IAiTHERH

Teuttle - Direct

1 Q. Had you seen her working around Between the Bread before?

2 A. No, I saw her for the first time three months before.

3 THE COURT: Three months before July 13?

4 THE WITNESS: Yes, more or less she would come to buy.

5 THE COURT: She would come to buy what?

6 THE WITNESS: She would come to the office. I'm  
7 trying to say to the restaurant, to Between the Bread.

8 THE COURT: Go ahead.

9 Q. And what would she do when you saw her?

10 A. She would arrive and go into the office.

11 Q. Do you know what kind of job she had, what her position  
12 was?

13 A. Simply the information that she worked as part of human  
14 resources.

15 Q. And was she in charge of the documents at the company, the  
16 employment documents?

17 A. Honestly, I don't know, but when she finally demonstrated  
18 this to us, I think yes.

19 Q. And you said she gave you the document on July 13, 2018, is  
20 that correct?

21 THE COURT: Is that correct?

22 A. Can you repeat it, please?

23 Q. You said Gina gave you the document.

24 THE COURT: He didn't say Gina.

25 Q. You said that the human resources person, I apologize, gave



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Teutle - Direct

1 you the document on July 13, 2018, correct?

2 A. Yes.

3 Q. And when she gave you -- do you know what time of day it  
4 was when she gave you the document?

5 A. Approximately it was afternoon, midday, sorry.

6 Q. And when you received it, were you alone or were you with a  
7 group of people?

8 A. There was like four to five delivery boys, five.

9 Q. Do you recall who they were?

10 A. Yes, there was Constantino, this other guy called Chris  
11 that I remember also being -- Orlando. The other ones I don't  
12 remember too well.

13 THE COURT: Was it all men or were there any women?

14 THE WITNESS: Yes, there were men.

15 THE COURT: Were there any women?

16 THE WITNESS: There is one woman working there.

17 THE COURT: I'm asking on July 13, when the lady came  
18 and gave you the paper, were there any women there with you and  
19 the other delivery people?

20 THE WITNESS: No, no, no, no. I don't remember, but  
21 no.

22 Q. And did she say anything prior to giving you this document?

23 A. She read the document.

24 THE COURT: She read it out loud?

25 THE WITNESS: She was talking to one of the other

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Teutle - Direct

1 co-workers, and I was just listening, that this was going to  
2 help us and all that, but just up to that.

3 THE COURT: Next question.

4 Q. And did she say anything to you after you received the  
5 document?

6 A. Well, that I had to sign it.

7 THE COURT: What did she say?

8 THE WITNESS: For us to sign it.

9 THE COURT: Do you remember the words she used?

10 THE WITNESS: I just remember that, that this was  
11 going to benefit us, and then I left to a delivery, and that's  
12 all I remember.

13 THE COURT: Well, did she speak to you in English or  
14 Spanish?

15 THE WITNESS: Sometimes she spoke in Spanish, but  
16 other times she spoke in English.

17 THE COURT: When she told you you had to sign it, was  
18 that in English or in Spanish?

19 THE WITNESS: In Spanish.

20 THE COURT: Did she say you had to sign it right  
21 there?

22 THE WITNESS: She said yes, and if not, to bring it  
23 back. I asked her if she could give me the opportunity so I  
24 could look at it.

25 THE COURT: You asked her that?

IAiTHERH

Teuttle - Direct

1 THE WITNESS: And she insisted on a few occasions,  
2 like or three times, for me to sign it, but no.

3 THE COURT: No, we're just talking about July 13. So  
4 how many times did she tell you to sign it on July 13?

5 THE WITNESS: Well, just one time.

6 THE COURT: Okay. And she told you that in Spanish?

7 THE WITNESS: Yes.

8 THE COURT: Did any of the people you saw there sign  
9 it right there?

10 THE WITNESS: I did not see anyone sign.

11 THE COURT: And you said you had to leave early to do  
12 a delivery, is that right?

13 THE WITNESS: No, what happened was is they called me  
14 and I had to go out and do a delivery.

15 THE COURT: So you were called to do a delivery before  
16 the meeting ended, is that correct?

17 THE WITNESS: Yes, I was called.

18 THE COURT: All right. Did you bring the paper with  
19 you?

20 THE WITNESS: The paper, yes, yes, she gave it to me.

21 THE COURT: Go ahead.

22 BY MR. BROWN:

23 Q. And when you received the document after this human  
24 resources person had spoken to you, did you believe that you  
25 could be terminated if you did not sign?

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Teutle - Direct

1 A. Frankly, yes, I felt that I would be let go.

2 THE COURT: Why did you think that.

3 THE WITNESS: Because it's an intimidation that you  
4 feel at the moment.

5 THE COURT: Did she say you would be fired?

6 THE WITNESS: She did not say that, but we had to sign  
7 it.

8 THE COURT: And did she do or say anything else that  
9 led you to believe that you would be fired if you didn't sign?

10 THE WITNESS: Well, on the second occasion when I saw  
11 her, I saw her from a distance --

12 THE COURT: When was the second occasion?

13 THE WITNESS: The next day.

14 THE COURT: The next day. Where were you when you saw  
15 her?

16 THE WITNESS: I was in the hallway.

17 THE COURT: Who else was present?

18 THE WITNESS: I believe it was the same co-workers. I  
19 mean there was Orlando and maybe three or four others.

20 THE COURT: And you're sure it was the next day?

21 THE WITNESS: Yes.

22 THE COURT: And do you recall what time of day it was?

23 THE WITNESS: I think it was approximately also like  
24 one in the afternoon.

25 THE COURT: Do you recall what day of the week it was?

IAiTHERH

Teutle - Direct

1 THE WITNESS: In all sincerity, I did not take that  
2 into account.

3 THE COURT: So what happened when you encountered her  
4 the next day?

5 THE WITNESS: I saw then at that moment that she  
6 wanted us to sign, and I felt like a kind of intimidation,  
7 didn't feel anything bad, but then I felt like I had to leave  
8 there.

9 THE COURT: You said you saw that she wanted you to  
10 sign. What did you see that led you to conclude that?

11 THE WITNESS: Well, that I felt that by force she  
12 wanted us to sign that document.

13 THE COURT: You felt that by force. What does that  
14 mean?

15 THE WITNESS: Well, at least at the moment I felt  
16 fear.

17 THE COURT: I am not asking you what you felt, I'm  
18 asking you what you heard and what you saw. So what did she  
19 say?

20 THE WITNESS: For us to sign.

21 THE COURT: What did she say, as best you can  
22 remember?

23 THE WITNESS: Well, at the moment she was: Sign it,  
24 because this document is needs to be signed by all of you.

25 THE COURT: You just encountered her and she said:

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Teuttle - Direct

1 Sign it, this document needs to be signed by all of you?

2 THE WITNESS: Yes, or rather that we had to sign it.

3 THE COURT: And so you just walked upon her, that's  
4 the first thing she said to you was: Sign it.

5 THE WITNESS: Yes.

6 THE COURT: Was she already in a conversation with  
7 somebody else when you arrived?

8 THE WITNESS: I believe so. She was with many of the  
9 delivery boys.

10 THE COURT: And could you hear what they were saying  
11 before you got into that conversation?

12 THE WITNESS: The truth is since we always have some  
13 work to do and I was just there, and I felt bad, I just wanted  
14 to leave. So I had to pick up the plates, the ones that we had  
15 for pick up, and leave it in the kitchen to get our delivery  
16 ready for what had to be taken away.

17 THE COURT: Next question.

18 BY MR. BROWN:

19 Q. Did you -- do you know of anyone who did sign the  
20 agreement?

21 A. The truth, no.

22 MR. BROWN: I have no further questions.

23 THE COURT: Were you fired for not signing?

24 THE WITNESS: Well, then the time passed, she didn't  
25 come, and I don't know what happened.

IAiTHERH

Teutle - Cross

1 THE COURT: Do you know the name of this person?

2 THE WITNESS: Which one, the one who wanted us to  
3 sign?

4 THE COURT: Yes.

5 THE WITNESS: The name, no.

6 THE COURT: Okay. Go ahead. Cross-examination.

7 CROSS-EXAMINATION

8 BY MR. DAVE:

9 Q. Sir, when did you first learn about this lawsuit?

10 A. It was approximately the month of August.

11 Q. Sorry, did you say the month of August?

12 A. August of the lawsuit when I became aware of the lawsuit.

13 THE COURT: Was it before or after you had this  
14 conversation with the lady who told you to sign the document we  
15 just showed you?

16 THE WITNESS: It was after.

17 Q. I would like you to review what has been marked as  
18 Defendant's Exhibit 9 in front of you. After you have reviewed  
19 that document, sir, my question is: Do you recognize this  
20 document?

21 THE COURT: Do you recognize it?

22 THE WITNESS: Yes.

23 THE COURT: What is it?

24 THE WITNESS: Delivery boys.

25 THE COURT: That document is not delivery boys. What

IAiTHERH

Teuttle - Cross

1 is that document? What do you recognize it to be?

2 THE WITNESS: Like a class action suit.

3 THE COURT: So you recognize this from seeing it  
4 before, correct?

5 THE WITNESS: This, no, afterwards, it was afterwards  
6 that they sent me this notice.

7 THE COURT: But you have seen it before today,  
8 correct?

9 THE WITNESS: No, right now is the first time that I  
10 am looking at this document.

11 THE COURT: Go ahead.

12 BY MR. DAVE:

13 Q. Sir, did you receive anything in the mail regarding this  
14 lawsuit?

15 A. Yes.

16 Q. What did you receive in the mail?

17 A. A document that seemed like -- looked like a class action  
18 suit, like I mentioned, a class action suit.

19 Q. Was it in English or Spanish?

20 A. I believe that it was in English.

21 Q. Did somebody read that to you in Spanish?

22 A. Yes, I have children who read English and they read it to  
23 me.

24 Q. And did it ask you to do anything, the documents that you  
25 received?



IAiTHERH

Teuttle - Cross

1 A. Well, yes, if you are going to do this then you have to  
2 become a part of this because of injustices.

3 Q. I would like to show you, sir, what's been marked as  
4 Defendant's Exhibit 11. Do you recognize this document, sir?

5 A. Yes.

6 Q. Is that your signature on the line for signature?

7 A. Yes.

8 Q. And what is the date on this document?

9 A. There, 22nd May.

10 Q. Is that May 22nd, is that correct?

11 A. Yes.

12 Q. I would like you to review that a little bit closer, sir.  
13 Does that look like a six or a five to you for the date?

14 A. Two zero like 22.

15 Q. Is that your handwriting, sir?

16 A. Yes.

17 Q. So you dated this May 22nd?

18 A. Yes.

19 Q. And is this one of the documents that you received in the  
20 mail?

21 A. Not this one.

22 Q. How did you receive this document?

23 A. This one, how did I receive it?

24 Q. Yes.

25 A. By the attorneys through the letter.

IAiTHERH

Teutle - Cross

1 Q. So you received it through a letter, was that not through  
2 the mail?

3 A. Previously, yes, but this document, no.

4 Q. I want to understand, sir, how did this page, this  
5 document, end up in your hands.

6 A. Well, with this one, through the letter, we retained the  
7 attorneys so they could tell me what this is about.

8 Q. Sir, did you receive this -- did somebody hand this  
9 document to you or did you open an envelope that you received  
10 in the mail?

11 A. No, I went directly to the attorney's office.

12 Q. So you received this document when you went to the  
13 attorney's office, is that correct?

14 A. Yes.

15 Q. And that would have been on or before May 22nd, 2018, is  
16 that correct?

17 A. Yes, May. Yes, May.

18 Q. So on May 22nd of this year you knew about this lawsuit?

19 A. Yes.

20 Q. And did you know what this document means by signing this?

21 A. Well, what it says is this is a class action lawsuit.

22 Q. Well, but do you know what it meant by you signing this  
23 document?

24 A. Not precisely too well, but I have seen the representation  
25 and understood it was doing something in my favor.

IAiTHERH

Teuttle - Cross

1 Q. So you were participating in the lawsuit, correct?

2 A. Yes.

3 Q. And so as of May 22nd, you were part of the lawsuit?

4 A. Well, this document was signed then and I believe my  
5 lawsuit continues based on this document.

6 Q. I would like to show you what has been marked as  
7 Defendant's Exhibit Number 5.

8 Do you recognize this document, sir?

9 A. Yes.

10 Q. Is that your signature on page 2?

11 A. No. Oh, yes.

12 Q. Did you prepare this document?

13 A. What do you mean?

14 Q. Did you type this document up?

15 A. No, I just signed it with the attorneys.

16 Q. Did you read the document before you signed it?

17 A. From what I understood, could be why I signed it, I was  
18 because it was about what I was doing.

19 Q. My question to you, sir, is: Did you read it before you  
20 signed it?

21 A. Yes.

22 Q. Can you read English, sir?

23 A. I understand it a little.

24 Q. So you read this yourself, is that correct?

25 A. No, because I let myself go by the legal representation

IAiTHERH

Teutle - Cross

1 that I have so that I'm aware what it is.

2 Q. Did somebody read this for you?

3 A. The attorney.

4 THE COURT: Was it translated into Spanish for you?

5 THE WITNESS: Yes.

6 THE COURT: By whom?

7 Who translated it?

8 THE WITNESS: An attorney that works at the same law  
9 firm. I don't remember the name right now.

10 THE COURT: Go ahead.

11 BY MR. DAVE:

12 Q. Sir, I would like you to review paragraph 2 of this  
13 declaration. And I'll read the first sentence. It states: On  
14 July 13, 2018, and again on July 16, 2018, a manager --

15 A. On July 16, 2018 --

16 THE COURT: Stop, stop, stop. Listen to the question.

17 What is the question?

18 Q. Sir, you previously testified that an HR person distributed  
19 a document to you on July 13, is that correct?

20 A. Yes.

21 Q. And did you understand what that document was when you  
22 received it?

23 A. Can you explain a little more, please?

24 Q. Sure. I would like you to review Plaintiff's Exhibit 1  
25 that's in front of you, and I would like you to take a look at

IAiTHERH

Teutle - Cross

1 page 1.

2 A. This document.

3 Q. When you received this document, sir, did you understand  
4 what it was?

5 A. The truth is it had a little -- didn't understand it,  
6 frankly.

7 Q. Did the person who distributed it explain to you what the  
8 document was?

9 A. A little bit. Like I will repeat, they explain a little  
10 bit about what it was about, how it would benefit us.

11 Q. What did that person say?

12 A. Well, the one from human resources.

13 Q. What did she say?

14 A. The little bit I understood from what she said, that that  
15 document that we had to sign, that we needed it, that it could  
16 help us.

17 Q. So you did not know on your own what that document said, is  
18 that correct?

19 A. Yes, no, that I was not in agreement with the document,  
20 that's correct.

21 Q. I don't think I understood your answer. My question is:  
22 Did you understand what was contained in that document on  
23 July 13?

24 A. No, I did not understand it.

25 Q. Did you understand it on July 16?

IAiTHERH

Teutle - Cross

1 A. July 16, which document? The one that's over here? 13?

2 Q. I'll withdraw that question. You earlier said that the  
3 next day, the very next day the HR person again asked you to  
4 sign the document, is that correct?

5 A. Yes.

6 Q. Now your affidavit states that you represented that  
7 document again on July 16, not July 14, do you think perhaps  
8 you're mixing up your dates, sir?

9 A. Yes.

10 Q. So the second time the HR manager asked you to sign the  
11 document, did you understand at that time the contents of the  
12 document?

13 A. No, no, because I wanted to understand perfectly what the  
14 document contained, what the document said.

15 THE COURT: By the time of the second meeting, the  
16 second time you saw the woman, did you understand what that  
17 document was?

18 THE WITNESS: No, no, frankly not.

19 THE COURT: When did you learn what the document was?

20 THE WITNESS: Well, when I had to go with my legal  
21 representation and that's when I became aware of the document.

22 THE COURT: Go ahead.

23 BY MR. DAVE:

24 Q. I would like you to look at page 2 of Plaintiff's Exhibit  
25 1. Do you recognize that document, sir?

IAiTHERH

Teutle - Cross

1 A. I don't understand this document.

2 Q. Was this one of the other documents that was handed to you  
3 by the HR person on July 13?

4 A. There was many pages to sign; in other words, the document  
5 I received is the one at the beginning.

6 Q. How many documents did you receive from the HR person on  
7 July 13?

8 A. Just this document. Of this, I read a little bit, but I  
9 did not read any more.

10 THE COURT: How many pages did you get from the woman  
11 on July 13th?

12 THE WITNESS: Look, she gave me just a document that I  
13 mentioned, the first document, and the rest, just that one.

14 THE COURT: Just one?

15 THE WITNESS: Yes.

16 Q. Did the HR person discuss the employee handbook on July 13?

17 A. Well, the thing was there was some talking, but it happened  
18 so fast and it was all done in English and I had to go.

19 Q. So you don't know everything that was discussed by the HR  
20 person on July 13, is that fair?

21 A. Well, I believe the situation was for her to have us sign  
22 and that was all.

23 Q. That's not my question, sir. I don't want to know what  
24 your belief was. I'm asking: Do you for a fact know  
25 everything that the HR person discussed on July 13 or do you

IAiTHERH

Teuttle - Cross

1 not?

2 A. Not everything.

3 Q. And you also testified earlier that you left before the  
4 meeting ended, correct?

5 A. Yes, because they called me to delivery and I had no more  
6 time to listen, and besides, I was intimidated.

7 Q. How did you come about speaking to the HR person on  
8 July 13?

9 A. It's that every time we are waiting to be called for  
10 deliveries she has to pass by that same hallway, whether to  
11 have a dialogue or to get to the office.

12 Q. And you mentioned she went into the office when she  
13 arrived, is that correct?

14 A. She entered, went in, and then she came out.

15 Q. When she came out, is that when she talked to you and the  
16 other delivery boys?

17 A. Yes, then she started talking with everyone that was there,  
18 the five to six delivery boys.

19 Q. So this was not a prescheduled meeting, is that correct?

20 A. It was not a meeting because she did not end up telling us.

21 Q. So you were working while she was talking, is that correct?

22 A. Exactly.

23 Q. And the other delivery boys were also working, preparing  
24 things while the HR person was talking?

25 A. Yes, or rather while we were working, like all the sudden



IAiTHERH

Teutle - Cross

1 the manager would say all right, you, delivery, go on. Like  
2 that.

3 Q. You mentioned Orlando and you didn't provide a last name,  
4 but Orlando was in attendance on July 13, is that correct?

5 A. Who was present?

6 Q. I'm asking you, was there an individual by the name of  
7 Orlando that was present on July 13?

8 A. Yes, Orlando.

9 THE COURT: That's the question, yes. Next question.

10 Q. Is there a person named Luis who goes by the name Orlando?

11 A. I honestly don't know.

12 Q. Did the HR person on July 13 ever say that if you don't  
13 sign this document you will be fired?

14 A. Sincerely, I did not hear it in that sense, but yes, but  
15 she insinuated in her way that we have to sign it by force.

16 Q. Is that a no, that she did not use those words?

17 A. But she was like forcefully, not in other words, but  
18 psychologically, you have to sign. And in fact, the second  
19 time she arrived angry because we did not sign it.

20 Q. Sir, I want you to answer my question so I can move on.  
21 Did she say that you will be fired if you do not sign?

22 A. No, she did not say that.

23 Q. Did she say that you would be fired if you did not sign on  
24 July 16?

25 A. She did not say that.

IAiTHERH

Teutle - Cross

1 THE COURT: The witness never said in court anything  
2 happened on July 16. So the second time to you met with the  
3 woman, was it the next day or three days later?

4 THE WITNESS: The next day.

5 THE COURT: Did you ever tell anybody that it was  
6 three days later?

7 THE WITNESS: No, I did not say anything.

8 THE COURT: Did you ever tell anybody it was July 16  
9 when you had this next meeting?

10 THE WITNESS: No, simply in that sense I didn't tell  
11 anyone.

12 THE COURT: How do you know it was July 13, the first  
13 meeting?

14 THE WITNESS: The first meeting?

15 THE COURT: Yeah, how do you know it was July 13 or  
16 not July 11 or July 12?

17 THE WITNESS: Because that day, how do you call it, in  
18 other words, that day we wrote things down and it was the 13th,  
19 because of the controls of the deliveries, and that's why it  
20 was noted as July 13.

21 THE COURT: What was noted as July 13?

22 THE WITNESS: Julio Cesar, what?

23 THE COURT: How do you know the first meeting was  
24 July 13?

25 THE WITNESS: Because sometimes I maintain like a

IAiTHERH

Teuttle - Cross

1 control of my deliveries, and that's why I remember -- I don't  
2 write it down, but I remember because of the control of my  
3 deliveries.

4 THE COURT: But you have a distinct recollection as  
5 you sit here now that that meeting with the woman took place on  
6 July 13.

7 THE WITNESS: Yes.

8 THE COURT: The second meeting was the next day.

9 THE WITNESS: Yes, she returned again for us to sign.

10 THE COURT: And did you ever learn her name?

11 THE WITNESS: In all sincerity I was not interested in  
12 her name.

13 THE COURT: That's not my question. Did you ever  
14 learn her name?

15 THE WITNESS: No, the next day she was just from human  
16 resources, simply that.

17 THE COURT: Go ahead. Anything else?

18 BY MR. DAVE:

19 Q. Sir, do you recall what day July 13 was?

20 A. 13, no, no, no, I don't remember too well, but I believe it  
21 might have been a Monday, maybe, but I don't remember too well.

22 Q. Do you work weekends, sir?

23 A. On some occasions, yes.

24 Q. Do you recall working --

25 A. But not here in Between the Bread, at other places.

IAiTHERH

Teutle - Cross

1 Q. Have you ever worked on a weekend at Between the Bread?

2 A. Yes, I have worked many times.

3 Q. Sir, I would like you to review Exhibit 5. This is your  
4 declaration.

5 On paragraph 2 you stated on July 13, 2018, and again  
6 on July 16, 2018, a manager named Gina distributed a document.

7 That's an incorrect statement, correct, sir?

8 A. It's correct.

9 THE COURT: I want to be clear, it was July 16 and you  
10 did know her name.

11 THE WITNESS: Honestly, no, no, never.

12 THE COURT: Was it July 16 that you met her the second  
13 time?

14 THE WITNESS: Yes. Well, yes, the 16th.

15 THE COURT: So what you just told me under oath --

16 THE WITNESS: Now I know her name is Gina.

17 THE COURT: Now you know. You're learning it here for  
18 the first time?

19 THE WITNESS: Well, because this is telling me she  
20 distributed the document.

21 THE COURT: But you signed this document, correct?

22 THE WITNESS: Yes.

23 THE COURT: But you're saying that you are just  
24 learning now what her name was?

25 THE WITNESS: Which document, this document or that

IAiTHERH

Teuttle - Cross

1 one? Yes, I'm becoming aware right now about this paper.

2 THE COURT: All right. Do you have any more?

3 MR. DAVE: Just a quick few questions, your Honor.

4 BY MR. DAVE:

5 Q. Sir, do you know anyone that was fired as a result of not  
6 signing Exhibit 1?

7 A. Honestly, no. No, because this is all individual.

8 Q. I'm not sure that I understood you. You don't know anyone  
9 that has been fired because they didn't sign, correct?

10 A. Which document, this document?

11 Q. The one that's Exhibit 1, sir, the one that you received  
12 from the HR.

13 A. Yes.

14 THE COURT: You know someone who got fired for not  
15 signing?

16 THE WITNESS: No, no, no, I don't know any of that. I  
17 don't know if they signed.

18 THE COURT: Anything else?

19 MR. DAVE: No, your Honor.

20 THE COURT: Anything else?

21 MR. BROWN: Not for this witness.

22 THE COURT: You can step down.

23 Let's take a break. Then I'm going to pick up with  
24 another matter, so I'm going to need you to clear some space at  
25 these tables. Okay?

IAITHER2

Gonzalez - Direct

1 So we'll start up again in 15. Clear half the table.

2 (Recess taken)

3 THE COURT: Who is the next witness?

4 MR. BROWN: The next witness is Carlos Gonzalez.

5 MR. DOBRY: Your Honor, I would like to comment.

6 During the recess, a couple of witnesses who previously  
7 testified were talking with the witnesses who have not yet  
8 testified who were sequestered, as well as one of the members  
9 of plaintiffs' counsel's table was speaking with the two  
10 witnesses who have yet to testify.

11 MR. BROWN: Your Honor, we just told them that we were  
12 take a recess, and the other two witnesses were called back in.

13 THE COURT: We can cross on this, but let's get  
14 started with the next witness.

15 I think we'll need to pick up the pace here because  
16 we're running out of time.

17 CARLOS GONZALEZ,

18 called as a witness by the Plaintiffs,

19 having been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. BROWN:

22 THE COURT: State your name and spell your name for  
23 the record.

24 THE WITNESS: Carlos Gonzalez, C-A-R-L-O-S  
25 G-O-N-Z-A-L-E-Z.

IAITHER2

Gonzalez - Direct

1 THE COURT: Good afternoon to you. Just listen to the  
2 questions and only answer the questions, okay?

3 Let's proceed, Mr. Brown.

4 BY MR. BROWN:

5 Q. When did you first start working for Between the Bread?

6 A. August 2014.

7 Q. And what was your position there?

8 A. Delivery guy.

9 Q. And are you still employed for Between the Bread?

10 A. Yes.

11 Q. And in front of you is a document that was marked as  
12 Plaintiff's Exhibit 1. Can you please review that document?

13 A. Okay.

14 Q. Have you ever seen this document before today?

15 A. Yes.

16 Q. When was the first time that you saw this document?

17 A. I remember that it was between July 12 or 13, I don't  
18 remember the exact date.

19 Q. And do you know who gave you that document?

20 A. Yes, Ms. Gina.

21 Q. Do you know who Gina is?

22 A. I knew Gina, met Gina the time she gave me the document. I  
23 knew she worked there and she dealt with the office and some  
24 papers, but didn't meet her until she gave me this document.

25 Q. So when she gave you the document, that was the first time

IAITHER2

Gonzalez - Direct

1 you had physically seen her?

2 A. In person, yes.

3 Q. Did you know of her before that?

4 A. Yes, I have heard her name that she worked in the office,  
5 but I never met her in person.

6 Q. What did you understand her position to be?

7 A. It seemed like she substitute Sarah or she worked in the  
8 same place she was at.

9 Q. And what position, what title did you believe that she had?

10 A. The manager of the employee papers.

11 Q. And when she gave you this document on either the 12th or  
12 the 13th, did show -- give it to you -- were you by yourself or  
13 were you with a group of people?

14 A. I was with a group of people.

15 Q. And how many people were you with?

16 A. I don't remember, but there were around seven to eight  
17 people.

18 Q. And do you recall any of the names of the people who you  
19 were with?

20 MR. DOBRY: Objection, calls for speculation.

21 THE COURT: Calls for speculation? I don't think it  
22 calls for speculation. Overruled.

23 A. Like three of them I remember.

24 Q. And can you say them now?

25 A. Christian, Ken, and Orlando.



IAITHER2

Gonzalez - Direct

1 Q. Any of the people that you -- in this courtroom today were  
2 at that meeting besides any of people in the galley here?

3 A. I don't remember, but I believe so, Constantino.

4 Q. And before Gina gave you the document, did she say anything  
5 to you or the group?

6 A. Before, no.

7 Q. And did she say anything to you during or after giving you  
8 the agreement?

9 A. When she gave the document, when she start distributing it,  
10 she said she would talk about it.

11 Q. And what specifically did she say?

12 A. Well, from what I remember, it had something to do with the  
13 sick days that we could have or personal days that we're  
14 supposed to get by law, but then after that I don't remember  
15 because I had go out and make a delivery.

16 Q. So you left before she could finish talking?

17 A. I did not finish, I did not get to hear the rest of the  
18 conversation because I had to leave the room.

19 THE COURT: But she gave you a paper?

20 THE WITNESS: Yes.

21 THE COURT: What did you do with the paper?

22 THE WITNESS: I took it with me.

23 THE COURT: Okay. Did you ever read it?

24 THE WITNESS: Part of it, of what I was able to  
25 understand from the English because I don't understand English

IAITHER2

Gonzalez - Direct

1 too well.

2 THE COURT: But did you ask somebody else to translate  
3 it for you?

4 THE WITNESS: In fact, I know Orlando asked her to see  
5 if she could give us a translation of this and she did not give  
6 us one.

7 THE COURT: Was she speaking English or Spanish?

8 THE WITNESS: In both. Both.

9 THE COURT: So after you left that meeting, did you  
10 see her again?

11 THE WITNESS: No, no longer.

12 THE COURT: Okay. I'm not sure what else he's got to  
13 say that's relevant.

14 BY MR. BROWN:

15 Q. So at what point did you understand the agreement?

16 A. Just because they started saying that this agreement was  
17 not good for us.

18 THE COURT: Who said that?

19 THE WITNESS: Kenneth.

20 THE COURT: But I'm not interested in what Kenneth  
21 thinks about any of this. This hearing is about --

22 Did you ever sign this agreement?

23 THE WITNESS: No.

24 THE COURT: Did you fear that you would be fired if  
25 you didn't sign the agreement?

IAITHER2

Gonzalez - Cross

1 THE WITNESS: Of course, I always thought that, the  
2 fact of not sign it I felt I could be fired.

3 THE COURT: Why? Why did you think that?

4 THE WITNESS: Because I don't want to get fired from  
5 the job, I have a family to --

6 THE COURT: I'm not saying why you don't want to get  
7 fired, I want to know why you did think you would be fired if  
8 you did not sign the document.

9 THE WITNESS: I believe that it was like a type of  
10 intimidation that they were having with this so that we would  
11 fear to be fired.

12 THE COURT: And how was this intimidation conveyed?

13 THE WITNESS: Well, by the fact that, like the rest  
14 said, about signing this for the arbitration.

15 THE COURT: Well, did Gina ever say that you would be  
16 fired if you didn't sign the arbitration provision?

17 THE WITNESS: No.

18 THE COURT: Anything else?

19 MR. BROWN: In the interest of moving things along, I  
20 have no other questions.

21 THE COURT: Cross-examination?

22 CROSS-EXAMINATION

23 BY MR. DOBRY:

24 Q. Good afternoon, Carlos.

25 A. Good afternoon.

IAITHER2

Gonzalez - Cross

1 Q. Are you still working at BTB Events and Celebrations?

2 A. Yes.

3 Q. I'm referring to Plaintiff's Exhibit 1 that was shown to  
4 you. You testified earlier that you were only provided a  
5 single document. Is that the document you're referring to?

6 A. Yes, this is what was given.

7 Q. Did you receive any other documents?

8 A. No.

9 Q. But then you later testified that when you were having a  
10 conversation with Gina she discussed sick days, is that  
11 correct?

12 A. Of course.

13 Q. Does the document marked as Plaintiff's Exhibit 1 that  
14 you're looking at, which you said was the only document that  
15 you received, does that document mention sick days?

16 A. I honestly did not read it completely, like -- I will say  
17 it again, I don't understand the English very well.

18 Q. But didn't you testify that you understood the agreement?

19 A. No, I never said that.

20 Q. I'm going to show --

21 MR. DOBRY: Does he have the Defendant's Exhibit 9 in  
22 front of him?

23 THE INTERPRETER: Yes.

24 Q. I would like you to review that document. Once you're  
25 finished reviewing, do you recognize this document?

IAITHER2

Gonzalez - Cross

1 A. Yes.

2 Q. Did you receive these documents in the mail?

3 A. Yes.

4 Q. When did you first learn of this lawsuit?

5 A. When all the other ones indicated that they had received  
6 this notice in the mail.

7 Q. So just so I'm correct, you learned of this lawsuit not  
8 from receiving this document in the mail but from hearing about  
9 it from other people?

10 A. Exactly. Because I moved out of my house and they did not  
11 have my new address.

12 Q. So you never received this document in the mail?

13 A. Well, after I went searching for it after I changed my  
14 address I went to my old mailbox to get my old mail.

15 Q. When did you move or change addresses?

16 A. It's been like four years now.

17 Q. In four years you never changed your address?

18 A. With Between the Bread, no, but with other places, yes.

19 Q. Is your address 87-10 31st Avenue, East Elmhurst, New York?

20 A. Yes, that's the address I have registered with Between the  
21 Bread.

22 Q. And you have not been living at that address for four  
23 years, is that correct?

24 A. No, because I moved.

25 Q. So if you did not receive this notice in the mail, did you

IAITHER2

Gonzalez - Cross

1 complete what says consent to join? It's the sixth page of  
2 that document.

3 A. Yes.

4 Q. How did you receive that document?

5 A. In the envelope that it came in.

6 Q. But you just testified that you did not receive the notice  
7 or Exhibit 9 in the mail.

8 A. That's what came in to my old mailbox.

9 THE COURT: How did you get it?

10 THE WITNESS: I got it from my mailbox.

11 THE COURT: So you weren't living there but you went  
12 back to the mailbox to get the mail?

13 THE WITNESS: Yes, I always return to my mailbox after  
14 I change over, I go back to my mailbox to get whatever mail I  
15 was supposed to receive.

16 Q. Who resides --

17 THE COURT: Wait. You were asked if you got this in  
18 the mail and you said no. Weren't you asked that?

19 THE WITNESS: They did not ask me that.

20 THE COURT: You were asked: You learned of this  
21 lawsuit not from receiving this document in the mail but about  
22 hearing about it from other people, and you said exactly,  
23 because I moved out of my house and they did not have my new  
24 address.

25 So you never received this document in the mail?

IAITHER2

Gonzalez - Cross

1 A. So the moment I became aware of the lawsuit is when I  
2 returned to my house to look at my mail.

3 THE COURT: Let's move on.

4 BY MR. DOBRY:

5 Q. You previously testified that you first learned about this  
6 lawsuit from a group of people that you spoke with. Is that  
7 not correct?

8 A. Exactly, and that's why I returned to look at my mailbox.

9 Q. I want to hand the witness what's listed as Defendant's  
10 Exhibit 13. Do you recognize that document, sir?

11 A. Yes.

12 Q. Is that your signature at the bottom of the page?

13 A. Yes.

14 Q. And on what date did you sign that document?

15 A. 7/12/18.

16 Q. And when did you speak with Gina?

17 A. About this?

18 THE COURT: When did you have the conversation you  
19 testified about earlier with Gina?

20 THE WITNESS: I never spoke with Gina.

21 THE COURT: So you were not at a meeting where she  
22 handed you a piece of paper?

23 THE WITNESS: Just the one for the arbitration.

24 THE COURT: Right. That's the point. When was that  
25 meeting in relation to when you signed this document?

IAITHER2

Gonzalez - Cross

1 THE WITNESS: Yes, like I was saying, I don't remember  
2 if it was July 12 or 13.

3 THE COURT: Next question.

4 BY MR. DOBRY:

5 Q. Where did you sign this document? Do you remember?

6 A. That was with the --

7 THE COURT: With the what?

8 THE WITNESS: With the attorneys.

9 Q. So am I correct in that you signed this document at the  
10 attorney's office?

11 A. Yes.

12 Q. Is that the first time that you had spoken with those  
13 attorneys?

14 A. Yes.

15 Q. And when did you return to your mailbox?

16 A. It hasn't been long, like two months ago.

17 Q. Did you return to your mailbox on July 12, 2018?

18 A. No, I did not go that day.

19 Q. Prior to July 12, 2018, when was the last time you went to  
20 that mailbox?

21 A. In May.

22 Q. When you signed this document, was that also your first  
23 time seeing this document?

24 A. Yes.

25 Q. Did the attorneys give you this document?



IAITHER2

Gonzalez - Cross

1 A. Yes.

2 Q. How did you know where the attorney's office was?

3 A. By the address that it had.

4 Q. What had the address?

5 A. I don't remember, it was 39th and something and the name of  
6 the attorney, and I asked also my friends.

7 Q. Which friends did you ask?

8 MR. BROWN: Objection. I'm having a hard time seeing  
9 the relevancy of this line of questioning.

10 THE COURT: I'm not sure either. Why do we care how  
11 he got to the lawyer's office?

12 MR. DOBRY: It shows that, one, he did not receive the  
13 notice, and two, may not have been informed of all the  
14 materials inside the notice.

15 And plaintiff's motion is accusing our clients of  
16 making misrepresentations about this lawsuit to a group of  
17 potential-opt in plaintiffs, yet at the same time --

18 THE COURT: Accusing you of contacting represented  
19 parties and basically offering an arbitration agreement while  
20 there was a notification that was pending, which is not the  
21 same thing.

22 So we're not going to get to your witness today, I  
23 guess. Maybe nobody cares.

24 MR. DOBRY: I'm almost done, your Honor.

25 BY MR. DOBRY:

IAITHER2

Gonzalez - Cross

1 Q. I'm showing the witness what is listed as Defendant's  
2 Exhibit 6. Do you recognize this document?

3 A. Yes.

4 Q. Did you type up this document?

5 A. What do you mean "type?" I don't understand.

6 Q. Did you write this document?

7 A. No.

8 Q. On July 12 or 13, did you know who Gina was?

9 A. It was until the moment that she gave me the arbitration  
10 that I met her, and before that I just knew her as a name of a  
11 person who worked at the office.

12 Q. So if you knew her name when you spoke with her, why did  
13 you submit a declaration that just said a manager, why not put  
14 her name?

15 A. What do you mean "manager?" I don't understand.

16 Q. What does it say in paragraph 2 of Exhibit 6?

17 Would you like me to read it so it could be  
18 translated?

19 We need affirmative yes or no.

20 THE COURT: A manager distributed a document. Why did  
21 you use that word and not the name of the person?

22 THE WITNESS: Because the name of the person didn't  
23 come to mind, just their charge.

24 Q. If you turn to the second page of that document, is that  
25 your signature?

IAITHER2

1 A. Yes.

2 Q. And did you read and understand this document when you  
3 signed it?

4 A. Yes, but I couldn't, how do you say, understand the  
5 explanation that was there.

6 Q. Is there a reason why you didn't sign your name on  
7 Exhibit 6 like you did on Exhibit 13?

8 A. No, no reason.

9 Q. And am I correct in that you still work for Between the  
10 Bread?

11 A. Yes.

12 Q. And to confirm, you did not sign the arbitration agreement,  
13 correct?

14 A. No, I did not sign it.

15 MR. DOBRY: No further questions, your Honor.

16 THE COURT: Okay.

17 MR. BROWN: Your Honor, the final witness  
18 Mr. Menendez, he actually never received the agreement from  
19 Gina, he only received it -- only saw it from other co-workers.  
20 So I think given the time limitations that we have, there's not  
21 much utility calling him, so we're prepared to rest.

22 THE COURT: You can step down. Thank you,  
23 Mr. Gonzalez.

24 MR. DOBRY: And Mr. Menendez also is not one of 18  
25 potential opt-in plaintiffs as well.

IAITHER2

Puppo - Direct

1 THE COURT: Well, I'm not sure if that's good or bad,  
2 but in other words, none of the opt-ins were chilled from going  
3 forward with this suit. Mr. Menendez may have been. But I'm  
4 not trying to talk you into calling him. I don't need to call  
5 him. You don't want to call him?

6 MR. BROWN: No, your Honor.

7 THE COURT: Let's get your witness on the stand.

8 Let me thank the interpreter. Thanks.

9 GINA PUPPO,

10 called as a witness by the Defendants,

11 having been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. DOBRY:

14 THE WITNESS: Gina Puppo, G-I-N-A P-U-P-P-O.

15 THE COURT: Let's proceed.

16 BY MR. DOBRY:

17 Q. Where are you employed, Ms. Puppo?

18 A. With Between the Bread Events and Celebrations.

19 Q. And what is your position with BTB?

20 A. Director of human resources.

21 Q. When did you begin to working for BTB Events and  
22 Celebrations?

23 A. March 5, 2018.

24 Q. Prior to working for BTB Events and Celebrations, did you  
25 work in a similar human resources role?

IAITHER2

Puppo - Direct

1 A. Yes, I did.

2 Q. How many years of experience do you have conducting human  
3 resources?

4 A. Approximately about 20 years.

5 Q. Do you speak Spanish, Ms. Puppo?

6 A. Yes, I do.

7 Q. Where did you learn to speak Spanish?

8 A. Well, it is my native language, so I learned that actually  
9 from my mother.

10 Q. And where were you born?

11 A. In Colombia.

12 Q. And are you fluent in Spanish?

13 A. I consider myself semi-fluent in Spanish.

14 THE COURT: Semi-fluent?

15 THE WITNESS: Semi-fluent.

16 Q. Since you began working for BTB Events and Celebrations,  
17 have you always been the director of human resources?

18 A. Yes, I have.

19 Q. And as the director of human resources, what are your  
20 primary duties and responsibilities?

21 A. My duties are taking care of human resources, human capital  
22 for the organization.

23 Q. Sorry?

24 A. For the organization.

25 Q. Do you determine the schedules for any employees?

IAITHER2

Puppo - Direct

1 A. No.

2 Q. Are you involved at all with the processing of newly hired  
3 employees?

4 A. Yes, I am.

5 Q. When you were onboarding a new hire or processing a new  
6 hire, what is that process, like what do you do?

7 A. I review new hire documentation and also ask the employees  
8 to complete documentation, complete like the I-9, the W-4, the  
9 IT-104 to satisfy the federal and state regulations.

10 Q. What documents are included for new hires when you go in to  
11 review --

12 A. Besides the I-9 and W-4, the tax forms, it also includes  
13 emergency contact information and also the employee handbook  
14 acknowledgment, employee handbook, because that's something I  
15 review with them, and also the arbitration agreement.

16 Q. When you were hired back in March of 2018, did you receive  
17 an arbitration agreement?

18 A. Yes.

19 MR. DOBRY: I would like to present what is marked as  
20 Defendant's Exhibit 1, which is a copy, and offer to submit  
21 that into evidence.

22 Q. Ms. Puppo, do you recognize that document?

23 A. Yes, I do.

24 Q. And what is that document?

25 A. That's the arbitration agreement.

IAITHER2

Puppo - Direct

1 Q. Is that a true and correct copy of the one you received  
2 when you started working for Between the Bread?

3 A. Yes.

4 Q. Is that document something that is ordinarily maintained  
5 and controlled by BTB Events and Celebrations during the course  
6 of its business?

7 A. Yes.

8 Q. Have you used a copy of this arbitration agreement when  
9 onboarding new hires for BTB Events and Celebrations?

10 A. Yes.

11 Q. Has this agreement changed at all since you have been  
12 employed by BTB Events and Celebrations?

13 A. No.

14 Q. Do you know how long this document has been a part of BTB  
15 Events and Celebrations's new hire process?

16 A. From my review of the employee files, I have seen that it  
17 was implemented approximately February of 2017.

18 Q. I am going to hand a copy of what is marked Defendant's  
19 Exhibit 14 to the witness.

20 MR. DOBRY: And I have a copy for your Honor.

21 THE COURT: Isn't it in the binder that you gave me?

22 Q. Please review these documents, Ms. Puppo, and let me know  
23 when you are ready.

24 MR. BROWN: Your Honor, I object to the admissibility  
25 of this document.

IAITHER2

Puppo - Direct

1 THE COURT: This is not being offered yet, so let's  
2 see if it's going to be offered. Frankly a lot of documents  
3 have not been offered. Maybe at the end of this we'll have a  
4 discussion about what everyone stipulates to, and if there's a  
5 dispute we can talk about that.

6 But anyway, do you have questions about this?

7 MR. DOBRY: Yes.

8 Q. Have you seen these documents before?

9 A. Yes.

10 Q. What are these documents?

11 A. These are signed arbitration agreements.

12 Q. Can you please identify some of the dates that these  
13 arbitration agreements were signed?

14 A. February 13, February 14 of 2017.

15 Q. So let's go through the first maybe five pages, if you  
16 will, and please identify what the signature date is on those  
17 five pages.

18 A. On the first five pages it's February 13, 2017.

19 Q. Are all these arbitration agreements dated sometime in  
20 February 2017?

21 A. Yes, dated 13, the 14th, and the 15th.

22 THE COURT: So 2017. That's before you started at the  
23 company, correct?

24 THE WITNESS: Yes, correct.

25 Q. Do you know if any upper level management or ownership of



IAITHER2

Puppo - Direct

1 BTB Events and Celebrations have also signed arbitration  
2 agreements?

3 A. Yes.

4 Q. Do you know if the defendant Ricky Eisen signed this  
5 arbitration agreement?

6 A. Yes.

7 Q. I would like to move Defendant's Exhibit 14 into evidence.

8 THE COURT: Do you object?

9 MR. BROWN: Yes, your Honor, I think in redacted form  
10 there's no actual information.

11 THE COURT: Well, the point is the date, that's what's  
12 being --

13 MR. BROWN: There's no way to verify that these dates  
14 are correct. Plus, these predate the time the witness was  
15 employed at the company.

16 THE COURT: I don't think that matters. I think the  
17 witness could authenticate these as business records. I don't  
18 know if she has, but she probably could.

19 Are you questioning whether they had arbitration  
20 agreements in place prior to 2018?

21 MR. BROWN: We dispute there was arbitration  
22 agreements given to class members. We have no idea  
23 regarding --

24 THE COURT: After or before?

25 MR. BROWN: Prior to July 13 of 2018.

IAITHER2

Puppo - Direct

1 THE COURT: Okay. So the names here are scratched out  
2 on this exhibit. Do you see that?

3 THE WITNESS: Yes.

4 THE COURT: Which is fine, but do you know the names  
5 that actually are under these redactions?

6 THE WITNESS: I do know that Ricky Eisen would have  
7 signed the agreement.

8 THE COURT: So that's one you already talked about.  
9 Was this an agreement that was given to all employees?

10 THE WITNESS: I was not employed with the company in  
11 2017.

12 THE COURT: But your understanding, when you became  
13 the HR --

14 THE WITNESS: Yes.

15 THE COURT: -- director was that there were policies  
16 in place, right?

17 THE WITNESS: Yes.

18 THE COURT: And so was it your understanding of the  
19 company policy there was a standard arbitration agreement and  
20 class waiver action that was provided to all new employees?

21 THE WITNESS: Yes.

22 THE COURT: That was your understanding?

23 THE WITNESS: Yes, it was my understanding.

24 THE COURT: All right. And that goes from delivery  
25 people all the way up to the president of the company, is that

IAITHER2

Puppo - Direct

1 is what you're saying?

2 THE WITNESS: Correct.

3 THE COURT: Go ahead.

4 BY MR. DOBRY:

5 Q. Do you know if arbitration agreements were always provided  
6 to new hires?

7 A. Well, for new hires they should have received the  
8 documents, the new hire documents, all the new hire documents.

9 Q. So is it possible that prior to you joining the company a  
10 new hire may not have received these documents even though it  
11 is part of the new hire documentation?

12 A. Yes.

13 Q. Since joining the company in March of 2018, have you used  
14 the arbitration agreement when onboarding new hires?

15 A. Yes.

16 Q. And did you use the arbitration agreement when onboarding  
17 all new hires after you joined the company?

18 A. Yes.

19 Q. Where is your office located?

20 A. Between the Bread Events and Celebrations' office is  
21 located at 115 West 45th Street.

22 Q. Is that where all BTB Events and Celebrations employees are  
23 located?

24 A. No, the location at 115 has the executive management and  
25 executive -- sorry, executive management and managerial support

IAITHER2

Puppo - Direct

1 staff.

2 Q. Where do catering assistants work?

3 A. They work at the location of the 145 West 55th Street.

4 That's the commercial kitchen and catering office.

5 Q. Just backtracking real quick to what is marked as  
6 Defendant's Exhibit 14, where are those documents kept?

7 A. In the employee files.

8 Q. Is it within the course and scope of BTB's document  
9 retention policies to keep these documents in the employee's  
10 file?

11 A. Yes.

12 Q. Who is the custodian of these files?

13 A. That would be me, myself.

14 MR. DOBRY: And now your Honor, I would like to move  
15 to admit Exhibit 14 as business records.

16 THE COURT: Okay. Any objection?

17 I think I already elicited the testimony that makes  
18 these even relevant, but I will allow it.

19 (Defendant's Exhibit 14 received in evidence)

20 THE COURT: Go ahead. Move on.

21 BY MR. DOBRY:

22 Q. Do you visit the 55th Street location?

23 A. Yes, I do.

24 Q. When is -- did you visit the 55th Street location in July  
25 of 2018?

IAITHER2

Puppo - Direct

1 A. Yes.

2 Q. Did you go there on July 13, 2018?

3 A. Yes, I did.

4 Q. Why did you go there on July 13, 2018?

5 A. I went there because the assistant catering manager named  
6 Maria Casas --

7 THE COURT: Could you spell that?

8 THE WITNESS: C-A-S-A-S.

9 THE COURT: What about her?

10 THE WITNESS: She had contacted me regarding a new  
11 hire, and I went to that location to meet with to meet the new  
12 hire and also review new hire documents, and also asked him to  
13 sign the new hire documentation.

14 Q. Do you recall the name of the new hire that --

15 A. Yes, Christian Garcia.

16 Q. Do you recall the date he was hired?

17 A. He was hired July 9.

18 Q. Did you hire him directly?

19 A. No, I did not.

20 Q. I believe you mentioned that you went there to review new  
21 hire documents. Why did you want to review new hire documents  
22 and who did you want to review them with other than Christian?

23 A. Well, I spoke -- of course I spoke with Christian because  
24 it was necessary for me to have him complete the new hire  
25 paperwork.

IAITHER2

Puppo - Direct

1 THE COURT: Did you do this with every new hire, you  
2 go to the restaurant where they're working?

3 THE WITNESS: I would go to location because sometimes  
4 they would hire them and, as you know, I need to have new hire  
5 documentation.

6 THE COURT: That's what you would do for every new  
7 hire since you started in March of 2018?

8 THE WITNESS: Sometimes I would go to the location and  
9 sometimes they would come to the office where I was located.

10 THE COURT: What percentage of the time did you go  
11 there and what percentage did they go to you?

12 THE WITNESS: I would say 75 percent of the time I  
13 went to the location.

14 THE COURT: You went to location.

15 Between March 2018 when you started and July 2013,  
16 which is what we're really talking about today, how many new  
17 employees were there in that period of time?

18 THE WITNESS: Approximately about 40.

19 THE COURT: All right. Go ahead.

20 And you did this for each one of those 40?

21 THE WITNESS: Yes.

22 BY MR. DOBRY:

23 Q. Who did you -- other than Christian, who did you want to  
24 discuss new hire documentation with at 55th Street on July 13?

25 A. Well, on July 13 I also took the opportunity to meet with

IAITHER2

Puppo - Direct

1 other employees, and the reason for that was because since the  
2 company was relocating, then I reviewed -- I was reviewing  
3 documents. And in the scope of reviewing the documents it came  
4 to my attention that some of the employee files did not contain  
5 the signed -- or refused to sign handbook acknowledgment or  
6 arbitration agreements. So therefore -- and because I didn't  
7 know if they had been presented with them to have been asked to  
8 sign off on them, then I took the opportunity when I went to  
9 55th Street to present them with these documents and also to  
10 review the handbook and giving them the option then to sign off  
11 on the agreement documentation.

12 Q. Did you know precisely who had these documents in their  
13 files and who didn't have these documents in their files?

14 A. No, I did not.

15 Q. Did you go through every personnel file for 55th Street to  
16 determine if they had or did not have certain documents in  
17 them?

18 A. No, I didn't go through every single file, but because I  
19 was doing a review of what was going over to the new location,  
20 I realized that in the file there were a lot of terminated  
21 employees that I was not familiar with their names, and I  
22 noticed that okay, there's both terminated and active in the  
23 files in here, and most of them did not have these documents.

24 Q. Do you know approximately how many personnel files were  
25 missing new hire documentation?

IAITHER2

Puppo - Direct

1 A. I would say maybe 80 to 90 percent of the files.

2 Q. When you went to 55th Street on July 13, did you schedule a  
3 meeting to meet with people?

4 A. No, I did not.

5 Q. Do you know approximately what time you went to 55th  
6 Street?

7 A. Yes, I went at approximately 9:30.

8 Q. Once you arrived, what did you do?

9 A. I went into the kitchen, the office in the kitchen, which  
10 is where their catering department is, and I asked Maria to  
11 speak to the new hire, and they brought the new hire in to  
12 speak with me to review the new hire documentation and to  
13 complete the forms.

14 Q. And then what did you do after you spoke with Christian?

15 A. After I was complete -- finished up with Christian, then I  
16 asked her if any other staff was available that I could speak  
17 to to review some documentation.

18 Q. Did you ask to speak to anyone else specifically?

19 A. No, I asked if any staff was available.

20 Q. Did you ask her if any specific type of employee was  
21 available?

22 A. No, I did not.

23 Q. So you did not ask Maria whether any of the cooks were  
24 available?

25 A. No.



IAITHER2

Puppo - Direct

1 Q. You didn't ask Maria if any of the catering assistants were  
2 available?

3 A. No.

4 Q. And then what happened after you asked that of Maria?

5 A. Then Maria brought me down into the kitchen and I spoke  
6 with -- I believe it was -- well, pretty sure it was to  
7 production people. So I went over the employee handbook with  
8 them, the arbitration agreement with them, the employee  
9 handbook acknowledgment. Then after I had finished up with  
10 them, then she also directed me to some other employees that  
11 were available, and then I spoke with -- I believe it was two  
12 food prep employees, and went over the documents with them as  
13 well. And then when I finished with these other two food prep,  
14 I believe, employees then I was walking back to catering office  
15 and I saw a group of employees in the hallway right outside of  
16 catering, and then I said to Maria, oh, there's a group of  
17 employees here, instead of one by one, I can just speak to them  
18 in a group.

19 Q. Apart from Christian, who I believe you testified said came  
20 into the office, did you speak to any employee that day  
21 individually about anything?

22 A. No, I did not.

23 Q. The events you just described, is that the totality of  
24 people that you spoke with on July 13?

25 A. Yes.

IAITHER2

Puppo - Direct

1 Q. When did you speak with -- in that series of events, when  
2 did you speak with catering assistants?

3 A. Well, the group that was in the hallway, which I believe  
4 were the catering assistants and possibly some other Between  
5 the Bread employees, that would have been -- if I was there at  
6 say 9:30, then possibly around 10:45 to 11.

7 Q. So my question is when you were describing the people that  
8 you spoke with on July 13, that was in chronological order?

9 A. Yes.

10 Q. When you were speaking with the last group, I believe you  
11 testified -- you said catering assistants, do you remember how  
12 many there were?

13 A. No, I do not.

14 Q. Do you know if all of the individuals were catering  
15 assistants?

16 A. No, I do not.

17 Q. Did you know the names of the individuals that you were  
18 speaking with?

19 A. No, I did not.

20 Q. So you can't tell us whether a person that you were  
21 speaking with was a catering assistant or whether they worked  
22 in production?

23 A. No, I cannot.

24 Q. Are you able to remember who was there, who was not there?

25 A. No, I do not. It was a group of employees that were there,

IAITHER2

Puppo - Direct

1 but I did not know the names of the employees to connect them  
2 with the faces.

3 Q. When you were speaking with these people, what did you  
4 discuss with them?

5 A. I went -- I actually let them know that I was there to  
6 review the employee handbook with them, that they should be  
7 aware of the employee handbook and the rights of the employees  
8 that are working for the company. And so I went through the  
9 employee handbook page by page. Actually I summarized each  
10 page.

11 Q. I'm going to hand the witness what is marked as Defendant's  
12 Exhibit 2. Do you recognize this document?

13 A. Yes.

14 Q. Please identify what it is.

15 A. It's the employee handbook.

16 Q. Is this a true and correct copy of the handbook that you  
17 brought to 55th Street?

18 A. Yes, it is.

19 Q. What did you do or say to the group about this document?

20 A. When it comes to the employee handbook, I review each page  
21 of the employee handbook and say these are the company policies  
22 and procedures, the employer's, so that they would know  
23 basically what they can expect from the employer and what the  
24 employer expects from the employee.

25 Q. Do you read each line?

IAITHER2

Puppo - Direct

1 A. Not each line, I summarize basically each page or each  
2 chapter and each policy.

3 Q. Did any of the people you were speaking with ask any  
4 questions about the handbook?

5 A. No, they did not ask any questions.

6 Q. When you were discussing the handbook, did you speak in  
7 English?

8 A. Well, with the group, because they speak Spanish, some of  
9 them speak English, some speak Spanish, then it was Spanish  
10 English where I would do Spanish and English.

11 Q. After you finished reviewing the handbook, what did you do  
12 next?

13 A. Then I went over the arbitration agreement. Well, I'm  
14 sorry, I went over the acknowledgment for the handbook.

15 Q. So you went over the acknowledgment for the handbook  
16 immediately after the handbook?

17 A. It was a continuation, basically, because with the employee  
18 handbook and the acknowledgment for the employee handbook.

19 Q. I hand a copy of what is marked Plaintiff's Exhibit 1.  
20 Please identify that document -- those documents.

21 A. Sorry?

22 Q. How many documents are part of Plaintiff's Exhibit 1?

23 A. Exhibit 1 is the arbitration agreement and the  
24 acknowledgment of the employee handbook.

25 Q. Thank you. Did you distribute those two documents?

IAITHER2

Puppo - Direct

1 A. Yes.

2 Q. Did you distribute those two documents to every employee  
3 you spoke with at 55th Street?

4 A. Yes.

5 THE COURT: But you didn't keep track of who you spoke  
6 to and who you gave the documents to?

7 THE WITNESS: Because it was just a group that was  
8 sitting there. Then when I walked over I said okay, let me  
9 read with you, but with me, the way that I would have handled  
10 it was every employee, whether they sign an acknowledgment or  
11 they refuse to sign, then I would have updated their employee  
12 files.

13 THE COURT: What if they already signed them? You  
14 didn't know if some of them already signed it and if their  
15 files had them, correct?

16 THE WITNESS: Correct.

17 THE COURT: So you thought maybe I will give them  
18 another one and maybe they will sign it again? Doesn't seem  
19 very scientific.

20 THE WITNESS: Well, with the employee handbook,  
21 because as HR I am supposed to be an advocate for employees,  
22 and because I have had conversations with employees where they  
23 weren't familiar vacation, with sick time, then when I had this  
24 opportunity to review, then it was reviewing to everyone  
25 because --

IAITHER2

Puppo - Direct

1 THE COURT: I get you reviewing to everyone, but you  
2 gave documents to people that they were supposed to sign and  
3 those become part of their personnel file, right?

4 THE WITNESS: Yes.

5 THE COURT: But you didn't know whether some of them  
6 had already filled out those documents.

7 THE WITNESS: Correct.

8 THE COURT: Go ahead.

9 BY MR. DOBRY:

10 Q. Did anyone that you spoke with on July 13 tell you that  
11 they have already signed either of those two documents?

12 A. No, they did not.

13 THE COURT: Did you ask?

14 THE WITNESS: No, I did not ask.

15 Q. Did you distribute those two documents to people that you  
16 were speaking with?

17 A. Yes.

18 Q. Did you distribute them before or after reviewing the  
19 handbook?

20 A. It was after.

21 Q. Did you say anything specific about the verification, about  
22 the acknowledgment form?

23 A. Well, the acknowledgment form, I basically summarize the  
24 acknowledgment form as well so they were aware of what it said  
25 and they would be then responsible for the -- to become

IAITHER2

Puppo - Direct

1 familiar with the policy or policies.

2 Q. Did you review the acknowledgment form in English or  
3 Spanish?

4 A. It was both Spanish and English.

5 Q. And after reviewing the acknowledgment form, did you review  
6 the arbitration agreement?

7 A. Yes.

8 Q. And is the copy of the arbitration agreement I showed you  
9 earlier a copy of the agreement that you distributed to these  
10 employees?

11 A. Yes.

12 Q. Did you review the arbitration agreement line by line?

13 A. I basically summarized it.

14 Q. Did you -- were there any particular portions of that  
15 document that you emphasize when you are discussing with  
16 employees?

17 A. When it came to arbitration agreement, I said to them in  
18 Spanish that the -- (speaking Spanish) -- means the company,  
19 that the company is -- would like to basically, would like  
20 to -- I'm trying to say the translation of -- (speaking  
21 Spanish) -- into English, more the company is -- the company  
22 would like to agree with the employees that should anything --  
23 went through the arbitration agreement, and I ended that by  
24 saying to them if they were -- if they're also -- if I say in  
25 Spanish -- (speaking Spanish).

IAITHER2

Puppo - Direct

1 THE COURT: Look, the court reporter is not going to  
2 get that down. Say what you said in English.

3 THE WITNESS: Which means that if they're also in  
4 agreement, then they can sign and choose to sign the document.

5 Q. Did you tell any of the last group that you spoke with, the  
6 ones with the catering assistants, did you tell them that they  
7 were required to sign the arbitration agreement?

8 A. No, not at all.

9 Q. Did you tell any employee that you spoke with at 55th  
10 Street that they were required to sign, and if they didn't,  
11 they would be fired?

12 A. No, I did not.

13 THE COURT: Were they required to sign an  
14 acknowledgment of the employee handbook?

15 THE WITNESS: Well, employees can sign the  
16 acknowledgment, but employees, sometimes in other companies  
17 that I worked for, have refused to sign, and I just need to  
18 acknowledge that on the form.

19 Q. Did any of the individuals that you were speaking with on  
20 the 13th refuse to sign both the arbitration agreement and the  
21 verification form?

22 A. They didn't refuse to sign, say that I refuse to sign it,  
23 they had just asked, because when I was finishing up on the  
24 conversation with the staff there, and they said if anyone  
25 wants to return any signed documents to me they can do so now,



IAITHER2

Puppo - Direct

1 and one of the catering assistants named Orlando, he said oh, I  
2 really want to take it home to review it. And I said that's  
3 okay, that's your right to do that. Then everybody in the  
4 group said that they also wanted to take it home to review it.  
5 And I said okay, that's fine, that's fine.

6 THE COURT: How did you plan on keeping track as to  
7 whether or not they completed the forms?

8 THE WITNESS: Because I have a listing of the  
9 employees, so then I would be able to also check off on my list  
10 that all the employees --

11 THE COURT: But you didn't even know the people you  
12 were talking to, right?

13 THE WITNESS: No, but if I received the form back it  
14 would have their name and I would be able to track it.

15 THE COURT: So I don't understand. You gave out forms  
16 to certain people that you met, right?

17 THE WITNESS: Yes.

18 THE COURT: Not the entire office, not the entire --

19 THE WITNESS: No.

20 THE COURT: -- location.

21 And you told them to get them back to you, is that  
22 right?

23 THE WITNESS: I said if they wanted to sign it, they  
24 could sign it, as I was there.

25 THE COURT: And if they took them home, what were they

IAITHER2

Puppo - Direct

1 to do?

2 THE WITNESS: They were going to review them.

3 THE COURT: And then do what? Mail them to you?

4 THE WITNESS: No, I said I would be back the following  
5 week, I will be back next week, and you can give me any  
6 documents that you choose to sign.

7 THE COURT: Okay. But you didn't keep track to who  
8 you had given them to.

9 THE WITNESS: No.

10 THE COURT: So if you missed them the next week, how  
11 would you know whether they had signed or hadn't signed?

12 THE WITNESS: Well, the way that I was planning to --  
13 because it was such a just a prompt kind of meeting, was the  
14 way that I keep track of all the employees documents or  
15 anything that needs to be signed or trainings or anything is I  
16 keep track of it on Excel.

17 THE COURT: Well, but you had it in Excel before you  
18 went to this location, right?

19 THE WITNESS: Yes.

20 THE COURT: So you already knew who signed and hadn't  
21 signed already, right?

22 THE WITNESS: No, no, no, I did not have that, no, I  
23 had a listing of the employees that worked for the company,  
24 yes, on a spreadsheet, but I did not have a listing of who had  
25 signed and who had not signed.

IAITHER2

Puppo - Direct

1 THE COURT: So I don't understand. So a week later  
2 when you came back you were going to and collect whatever you  
3 could collect and then do what?

4 THE WITNESS: Then I would mark them just as I had  
5 started to for the employees that signed.

6 THE COURT: If they didn't sign, what, you would  
7 follow up with them?

8 THE WITNESS: Yeah, if an employee doesn't return  
9 documents, yes, of course I would follow up with an employee if  
10 they decided not to sign. It's their right not to sign, but I  
11 would indicate that they had refused it sign the document and  
12 then I would file that in their file.

13 THE COURT: Go ahead.

14 BY MR. DOBRY:

15 Q. Did any employees sign arbitration agreements on July 13?

16 A. Yes.

17 Q. Did anyone in the final group you were speaking with sign  
18 the arbitration agreement on July 13 in the final group you  
19 were speaking with?

20 A. No.

21 Q. I'm going to provide a copy of what is marked as  
22 Defendant's Exhibit 15. Please take a moment to review. And I  
23 will come back for a moment to what is marked as Defendant's  
24 Exhibit 2, I believe, that employee handbook. Is that a true  
25 and correct copy of the one that you brought with you to 55th

IAITHER2

Puppo - Direct

1 Street on July 13?

2 A. Yes.

3 Q. Where is that document kept?

4 A. In the corporate office.

5 Q. Is that handbook or is that document kept in the course and  
6 scope of the business of BTB Events and Celebrations?

7 A. Yes.

8 Q. Who is the custodian of that document?

9 A. I am.

10 MR. DOBRY: Your Honor, I would like to admit  
11 Defendant's Exhibit 2 into evidence.

12 THE COURT: Any objection?

13 MR. BROWN: I mean I don't see the relevancy, but I  
14 have no objection to admissibility.

15 THE COURT: This is what you brought with you to the  
16 location on July 13, right?

17 THE WITNESS: Yes.

18 THE COURT: Did you hand out copies of it.

19 THE WITNESS: No, I did not hand out copies.

20 THE COURT: Exhibit 2 is received.

21 (Defendant's Exhibit 2 received in evidence)

22 Q. When you were speaking with the employees on the 13th, did  
23 you tell them there would be consequences if they did not sign?

24 A. No.

25 Q. Did you say anything that would suggest to them they would

IAITHER2

Puppo - Direct

1 be looked upon unfavorably if they did not sign?

2 A. No.

3 Q. What if they did sign, did you tell them they would receive  
4 preferential treatment?

5 A. No.

6 Q. Please review the document marked Exhibit 14. No, I  
7 apologize, Exhibit 15. What are these documents?

8 A. 15 is the arbitration agreement.

9 Q. When are these arbitration -- when did you get these  
10 arbitration agreements signed?

11 A. The ones in my hand right now were signed on the 13th and  
12 on the 17th.

13 Q. Are these the arbitration -- all the arbitration agreements  
14 that were signed between September 13 and September -- sorry,  
15 July 13 and July 17, 2017?

16 A. Yes.

17 Q. Did you personally distribute each of these arbitration  
18 agreements to the signing employees?

19 A. Yes.

20 Q. Can you please identify any catering assistants who signed  
21 this agreement on July 13, 2018 based off of this document?

22 A. On July 13, Christian Garcia was the only catering  
23 assistant that signed.

24 Q. To confirm, Mr. Garcia was a new hire?

25 A. Correct.

IAITHER2

Puppo - Direct

1 Q. Did any other catering assistants sign the arbitration  
2 agreement after July 13, 2002?

3 A. Yes.

4 Q. Do you know how many catering assistants signed after the  
5 13th?

6 A. One.

7 Q. Do you recall the name?

8 A. Yes, Paul Lobel.

9 Q. Where are each of these documents in Exhibit 15 kept?

10 A. With the new hire documentation in the employee files.

11 Q. Are they in a general file for employee files or in  
12 specific files?

13 A. They're in their individual file.

14 Q. What do you mean by "individual file?"

15 A. Their individual HR file. Every employee has an HR file.

16 Q. Are these true and correct copies of the signed arbitration  
17 agreements that are in these employees' files?

18 A. Yes.

19 Q. Are these documents kept in the normal scope of business of  
20 BTB Events and Celebrations?

21 A. Yes.

22 Q. Who is the custodian of these documents and personnel  
23 files?

24 A. I am.

25 MR. DOBRY: Your Honor, I would like to submit

IAITHER2

Puppo - Direct

1 Defendant's Exhibit 15 into evidence.

2 THE COURT: Any objection?

3 MR. BROWN: Same objection as the other agreements.

4 THE COURT: I think your other objections were  
5 hearsay -- including hearsay. I think this is a business  
6 record, but the relevance is I think somewhat limited. It  
7 shows some people did consent during this time period, right?  
8 Doesn't show whether they were intimidated to doing it or  
9 whether they did it voluntarily and happily, it doesn't show  
10 anything about that, just shows that they submitted them.

11 For that limited purpose, I will allow it, but let's  
12 wrap it up. I have an affidavit from this witness.

13 (Defendant's Exhibit 15 received in evidence)

14 Q. Ms. Puppo, after the 13th, when was the next time that you  
15 went to 55th Street?

16 A. On the 17th.

17 Q. Did you speak with any employees at 55th Street the  
18 following day on July 14?

19 A. No.

20 Q. Is BTB Events and Celebrations open on Saturdays?

21 A. No.

22 Q. Did you go to 55th Street on July 16, 2018?

23 A. No.

24 Q. Why did you go to 55th Street on July 17, 2018?

25 A. Again, I went for a new hire, employee new hire. And the

IAITHER2

Puppo - Direct

1 reason why it was imperative that I go on that Tuesday was  
2 because payroll is processed on Wednesday, so new hire  
3 information needs to be inserted, updated into the payroll  
4 file. Since I took on the responsibility just two weeks  
5 before, I needed to be sure that I had that information for the  
6 new hire in the system.

7 Q. Did you have any other reason to go to 55th Street on the  
8 17th?

9 A. No, that day was imperative for the new hire.

10 Q. Did you speak to anyone about the arbitration agreement at  
11 55th Street on the 17th?

12 A. Yes, as I was walking in and passing actually the catering  
13 assistants, then I said: Oh, since I'm here, if anybody has  
14 any documents, any signed documents, actually, to return, you  
15 can return them to me now.

16 Q. And did you discuss the arbitration agreements with anyone?

17 A. Well, when I did say that to the group, then one of the  
18 employees said to me that oh, he had left his home, and then I  
19 said, I can get another copy if you want me to, and he said no,  
20 I really want my daughter still to review them with me, and I  
21 said okay, fine. And the other people that were in the group  
22 were basically saying they need more time to review them. I  
23 said okay, fine. Then I went into the office where Maria is  
24 situated.

25 Q. When did you meet with Mr. Lobel?



IAITHER2

Puppo - Direct

1 A. During that same time when I was there.

2 Q. So let's backtrack. Around what time did you go to 55th  
3 Street on July 17?

4 A. I believe I went about 9:45.

5 Q. And then what did you do when you walked into the facility?

6 A. I walked into the facility, and then because as you walk  
7 into the facility you pass the hallway before you get into the  
8 catering manager's office, and that's where they were standing.  
9 So as I was passing, that's when I said oh, since I'm here,  
10 then if anyone has any documents they would like to return to  
11 me.

12 Q. Did you speak to Mr. Lobel at that time?

13 A. I spoke to Mr. Lobel, yes, actually, because when I went  
14 through -- when I was walking through and some of the -- there  
15 was an employee that I really don't recall his name, and he  
16 said: Oh, what documents are those? And then I said these  
17 were actually -- and I explained to him this was the  
18 arbitration agreement and the employee handbook acknowledgment  
19 form, and then Paul also was -- he came over and then I gave  
20 him the documents as well. And then Paul said oh, I have been  
21 with the company for so many years, he said I have no problem  
22 with this, and he signed them.

23 Q. Did you tell Paul that he had to sign them?

24 A. No, actually Paul is the one who said to me: Oh, I have  
25 been with the company many years, I have no problem with this.

IAITHER2

Puppo - Direct

1 Q. As of July 13, 2018, did you know that Mr. Ramon Hernandez  
2 had filed a lawsuit?

3 A. No, I did not.

4 Q. Did you know that any current or former catering assistant  
5 had filed a lawsuit at that time?

6 A. No, I did not.

7 THE COURT: So you were the director of human  
8 resources and you were not aware that employees of the company  
9 were suing the company for wage and hour violations that  
10 directly related to human resources issues? You were unaware  
11 of that?

12 THE WITNESS: I was unaware of that. I would have  
13 never asked employees to -- that they could sign arbitration  
14 agreements if I would have been aware of that.

15 BY MR. DOBRY:

16 Q. If you did not know there was a lawsuit, were you aware of  
17 any employees contemplating filing claims or did any employees  
18 come to you about complaints about wage and hour violations?

19 A. No.

20 Q. When you were speaking with employees on either the 13th or  
21 the 17th, did any individual mention or ask about wage and hour  
22 policies or practices?

23 A. No.

24 Q. Did anyone complain to you or make reference to wage and  
25 hour violations on either the 13th or the 17th?

IAITHER2

Puppo - Direct

1 A. No.

2 Q. What about prior, did you receive any complaints or  
3 concerns about wage and hour from any employee?

4 A. No.

5 Q. When did you learn of this lawsuit?

6 A. After I returned from visiting the 55th Street location.

7 THE COURT: On what date?

8 THE WITNESS: On the 17th, the afternoon of the 17th,  
9 approximately 4:00 p.m. I learned through an email from  
10 counsel.

11 Q. And since learning of this lawsuit, have you distributed  
12 arbitration agreements?

13 A. No, I have not.

14 Q. But what if there was a new hire at BTB Events and  
15 Celebrations, have you distributed an arbitration to a new  
16 hire?

17 A. No.

18 Q. When you were meeting with people on the 13th and the 17th,  
19 did anyone ask about anything to do with their legal rights?

20 A. No.

21 Q. Did anyone mention a lawsuit to you?

22 A. No.

23 Q. I present what is listed as Defendant's 17.

24 MR. DOBRY: This is a late addition.

25 THE COURT: Okay, go ahead.

IAITHER2

Puppo - Direct

1 Q. Please identify what this document is.

2 A. It's catering assistants employed between December 5th,  
3 2014 and the present.

4 THE COURT: It's a list, right? It's a list of  
5 employees?

6 THE WITNESS: Yes.

7 Q. Have you seen this document before Ms. Puppo?

8 A. Yes.

9 Q. Have you seen this document on or before July 17?

10 A. No.

11 Q. What is your understanding about this document?

12 A. That it lists employees that were employed with the company  
13 between that period, December 5 through the present.

14 Q. Do the individuals on this list have any relation to this  
15 lawsuit?

16 A. Yes.

17 Q. And what is that relation?

18 A. Some of them have opted into the lawsuit.

19 Q. Are you able to -- do you know if the individuals on this  
20 list are current or former employees?

21 A. Some are current and some are former.

22 Q. What about Mr. Luis Criollo, current or former employee?

23 A. Current employee.

24 Q. What about -- I believe it's Diallo, current or former  
25 employee?

IAITHER2

Puppo - Direct

1 A. No, he's a former employee.

2 Q. Do you know when he stopped working for Between the Bread?

3 A. He stopped working for Between the Bread, I believe that  
4 was 12/12 of 2017.

5 Q. Is Jose Diaz a current or former employee?

6 A. Jose Diaz is on leave currently.

7 Q. And when was he put on leave?

8 A. March 28 of this year.

9 Q. So he wasn't actively working in July of 2018?

10 A. No, he was on leave.

11 Q. And the same for Mamadou Diallo?

12 A. Yes.

13 Q. What about Constantino Fernandez?

14 A. He's still with the company.

15 Q. Is Fernandez the correct last name for Constantino?

16 A. Yes.

17 Q. Do you know a Constantino Hernandez?

18 A. Yes. Sometimes it's Hernandez or Fernandez.

19 Q. Is Carlos Gonzalez still a former or current employee?

20 A. He's a current employee.

21 Q. Is Robin Herrera a current or former employee?

22 A. Current employee.

23 Q. Is Ruben Irigoyen a current or former employee?

24 A. He's a current employee.

25 Q. Is Susana Jeronimo a current or only former employee?

IAITHER2

Puppo - Direct

1 A. Current employee.

2 Q. Is Paul Lobel a current or former employee?

3 A. Current employee.

4 Q. Is Hassan Mahboob a current or former employee?

5 A. Current employee.

6 Q. Is Gil Moreno a current or former employee?

7 A. Current employee.

8 Q. Is Mustapha Njie a current or former employee?

9 A. Former employee.

10 Q. And do you know when he stopped becoming -- he stopped  
11 working for BTB?

12 A. I believe it was early July 2018.

13 Q. What about Mr. Jose Reyes, is he a current or former  
14 employee?

15 A. Former employee.

16 Q. When did Mr. Reyes stop working for BTB?

17 A. It was August of 2018.

18 Q. And Ivan Rodriguez, is he a current or former employee?

19 A. Ivan is a current employee, I believe.

20 Q. Is Ramiro Sanchez-Garcia a current or former employee?

21 A. Yes.

22 Q. Current or former?

23 A. Current, sorry.

24 Q. Is John Sire Torrez a current or former employee?

25 A. Sir Torrez is a former employee.

IAITHER2

Puppo - Direct

1 Q. Is Eduardo Villegas Lopez a current or former employee?

2 A. He's a former employee.

3 Ivan Rodriguez actually is a terminated employee.

4 THE COURT: Terminated?

5 THE WITNESS: Yes.

6 Q. And do you know when he stopped working for BTB?

7 A. Ivan actually stopped working in -- that was also -- that  
8 was 12/22, I believe, 2017.

9 Q. So out of the -- this listing, how many employees are on  
10 this list?

11 A. 18 employees.

12 Q. Do you know -- having learned about this lawsuit, do you  
13 know how many of these individuals opted into this lawsuit?

14 A. Yes.

15 Q. And how many is that?

16 A. I believe it's -- if I'm correct, it will be 15. Well, I  
17 know there's 15.

18 Q. How many of these individuals on this list do you know  
19 signed arbitration agreements?

20 A. I don't know the exact number, I believe maybe seven on  
21 this list, or twelve, I'm not --

22 THE COURT: Twelve signed arbitration agreements?

23 THE WITNESS: Oh, arbitration agreements?

24 Q. The question is: Do you know how many people on this list  
25 signed arbitration agreements?

IAITHER2

Puppo - Direct

1 A. One.

2 THE COURT: Who?

3 THE WITNESS: That's Paul Lobel.

4 THE COURT: Who?

5 THE WITNESS: Paul Lobel, L-O-B-E-L.

6 Q. Do you recall, when you were at the 55th Street location on  
7 July 13, do you recall speaking to Jose Reyes?

8 A. No, I do not.

9 Q. Do you recall speaking to Mauro Teutle?

10 A. No, I do not.

11 Q. Do you recall speaking to Constantino Hernandez or  
12 Fernandez?

13 A. No, I do not.

14 Q. Do you recall speaking to Carlos Gonzalez?

15 A. No, I do not.

16 Q. Do you recall speaking to a Jorge Menendez?

17 A. No, I do not.

18 Q. By not recalling if you spoke with these people, does that  
19 mean that you didn't speak with them?

20 A. They may have been in the group, and if they were in the  
21 group then I was speaking to the group.

22 Q. After speaking -- after July 17, did you tell any catering  
23 department manager to not give time off to any catering  
24 assistant?

25 A. No, I did not.



IAITHER2

Puppo - Cross

1 Q. Did you tell any catering department manager not to give  
2 time off or allow sick days or tardiness to anyone who did not  
3 sign an arbitration agreement?

4 A. No, I did not.

5 Q. Did you tell any manager at the catering department to  
6 alter or modify someone's schedule if they didn't sign an  
7 arbitration agreement?

8 A. No, I did not.

9 Q. Did you terminate any employee who did not sign an  
10 arbitration agreement?

11 A. No, I did not.

12 Q. Did you instruct anyone else to terminate an employee who  
13 did not sign an arbitration agreement?

14 A. No, I did not.

15 Q. To your knowledge, has any employee been terminated for not  
16 signing an arbitration agreement?

17 A. No, they have not.

18 MR. DOBRY: No further questions.

19 THE COURT: All right. Cross-examination.

20 Could I say, if your clients wish to leave they're  
21 free to leave. They don't have to leave, they're welcome to  
22 stay, but if they want to leave, they can. I don't want them  
23 to feel trapped. Go ahead.

24 CROSS-EXAMINATION

25 BY MR. BROWN:

IAITHER2

Puppo - Cross

1 Q. What was your job title at Between the Bread?

2 A. Director of human resources.

3 Q. And can you describe what your job responsibilities were?

4 A. Well, they are -- my duties pertain to human resources and  
5 the human capital of the organization.

6 Q. Were you in charge of employee documentation at Between the  
7 Bread?

8 A. Yes.

9 Q. Were you involved in the hiring process of employees of  
10 Between the Bread?

11 A. Yes.

12 Q. The firing process?

13 A. Yes.

14 Q. Scheduling?

15 A. No.

16 Q. Were you involved in disciplinary issues other than  
17 termination?

18 A. With the management team, yes.

19 Q. And what was your role in terms of, say, hiring employees?

20 A. My role would be to review the new hire documentation, have  
21 them complete the necessary forms, review the employee handbook  
22 with new hires.

23 Q. And was there anyone else who was in charge of  
24 documentation, the employee documentation, besides yourself?

25 A. No.

IAITHER2

Puppo - Cross

1 Q. So you were solely responsible for the documentation for  
2 Between the Bread?

3 A. Yes.

4 THE COURT: Are there any other people who work in HR?

5 THE WITNESS: No.

6 THE COURT: Do you have a secretary or assistant or  
7 something like that?

8 THE WITNESS: No.

9 THE COURT: How many employees are there Between the  
10 Bread?

11 THE WITNESS: Approximately about 75.

12 THE COURT: All right. Go ahead.

13 Q. And who was your direct superior at Between the Bread?

14 A. Well, I really -- well, it's Ricky Eisen, and then I also  
15 have my lines to the VP and to the partner.

16 Q. And do you have to consult them with respect to decisions  
17 regarding, say, discipline or termination?

18 A. Yes.

19 Q. What other types of decisions would require you to get  
20 authorization from your superiors?

21 A. Well, termination.

22 MR. DOBRY: Objection, relevancy.

23 THE COURT: I'll allow a couple of questions, but it's  
24 not obvious to me sort of why I need to know all the approvals  
25 she needs to get. But firings, you said?

IAITHER2

Puppo - Cross

1 THE WITNESS: Yes, terminations, changes to policies,  
2 trainings.

3 Q. So when you saw that there was -- 80 to 90 percent of the  
4 employees were missing arbitration agreements, did you feel  
5 that that was something that you should talk to your superiors  
6 about?

7 A. Well, no, because I was responsible -- it was my  
8 responsibility to bring the employees' files up to date,  
9 because the company had never had a human resources presence  
10 there, so it was my responsibility to get things in order, the  
11 employee files, and also to review, as I said, the employee  
12 handbook with the employees so they were aware.

13 THE COURT: Did you ever mention to your bosses: By  
14 the way, 80 to 90 percent of our work force have not signed  
15 arbitration agreements? Did you ever have that conversation  
16 with Eisen or anybody else?

17 THE WITNESS: No, no, no.

18 THE COURT: Next question.

19 BY MR. BROWN:

20 Q. Did anyone tell that you everyone was supposed to have an  
21 arbitration agreement signed in their file?

22 A. Sorry?

23 Q. Did anyone tell you that everyone was supposed to have an  
24 arbitration agreement in their file?

25 A. No.

IAITHER2

Puppo - Cross

1 THE COURT: So as the HR director, you understood that  
2 an arbitration agreement meant that people couldn't go to  
3 court, they had to arbitrate instead. You understood that?

4 THE WITNESS: Yes.

5 THE COURT: Were you familiar with the litigation of  
6 the company with respect to its employees?

7 THE WITNESS: Yes.

8 THE COURT: Okay. So how did you learn there  
9 litigation involving employees of the company?

10 THE WITNESS: I know that there was a -- there was  
11 another case that we -- that the company was working on.

12 THE COURT: When did you learn about that?

13 THE WITNESS: That was for another location, that  
14 was -- I learned of that one in March.

15 THE COURT: In March when you started.

16 THE WITNESS: Yes.

17 THE COURT: So when you started you knew about a  
18 litigation --

19 THE WITNESS: Yes.

20 THE COURT: -- involving a different location.

21 THE WITNESS: Yes.

22 THE COURT: What did you know about that litigation?

23 THE WITNESS: That one was an employee that was  
24 claiming sexual harassment.

25 THE COURT: So you knew there was a sexual harassment

IAITHER2

Puppo - Cross

1 case. Was it a filed lawsuit or was it an arbitration? What  
2 was it?

3 THE WITNESS: That was a filed lawsuit.

4 THE COURT: Where was it pending? Did you know what  
5 court?

6 THE WITNESS: No.

7 THE COURT: Any other litigation that you were aware  
8 of?

9 THE WITNESS: No.

10 THE COURT: Okay, go ahead.

11 BY MR. BROWN:

12 Q. When did you first learn of this litigation then?

13 A. On July 17, approximately 4 o'clock, from an email from  
14 counsel.

15 Q. Defense counsel introduced Exhibit 17, which is a list of  
16 employees and their addresses. Who prepared that document?

17 A. I did not.

18 Q. So someone else besides yourself prepared it?

19 A. Yes.

20 Q. And who compiled the documents that were given to  
21 defendants' counsel in response to discovery in this case?

22 A. I'm sorry?

23 MR. DOBRY: Objection, relevancy.

24 THE COURT: I'm not sure -- I think certainly it is  
25 relevant, I'm not sure if it's an intelligible question.

IAITHER2

Puppo - Cross

1 Do understand what is being asked?

2 THE WITNESS: No.

3 THE COURT: You said you didn't learn about this  
4 litigation until July 17 or 18, right?

5 THE WITNESS: Yes.

6 THE COURT: Once you learned about this litigation,  
7 did you learn about what had been produced in the discovery  
8 portion of this litigation?

9 THE WITNESS: I didn't know all the details, I just  
10 knew that there was a case because I called counsel and I said  
11 okay, I see this email, and I wasn't aware of any case with the  
12 company.

13 THE COURT: But one of the things that was produced  
14 were time records of various employees. Were you involved in  
15 preparing these time records to be produced in discovery?

16 THE WITNESS: No, I was not the one who was handling  
17 payroll before I was -- I took over the responsibility of  
18 payroll at the beginning of July.

19 THE COURT: Well, another thing that happened in this  
20 case was the addresses -- names and addresses of employees were  
21 produced. Were you involved in producing those materials?

22 THE WITNESS: No, I was not. Because that's also in  
23 payroll.

24 THE COURT: All right. And then did you have regular  
25 meetings with the leadership team of the company?

IAITHER2

Puppo - Cross

1 THE WITNESS: Regular meetings, yes, I would have  
2 meetings.

3 THE COURT: Is there a discussion at those meetings,  
4 typically, about litigation?

5 THE WITNESS: No.

6 THE COURT: Okay, go ahead.

7 BY MR. BROWN:

8 Q. Do you use email at work?

9 A. Yes.

10 Q. Do you use it to communicate with your superiors?

11 A. Yes.

12 Q. So if we were to require disclosure of those emails, we  
13 would see no mention of this lawsuit at all in those emails?

14 MR. DOBRY: Objection, calls for speculation.  
15 Objection.

16 THE COURT: Sustained as to form.

17 Do you recall any emails involving this litigation  
18 prior to July 17?

19 THE WITNESS: No, I do not recall.

20 THE COURT: No, you don't recall any?

21 THE WITNESS: No.

22 THE COURT: Have you gone back and taken a look since  
23 and seen: Oh, my goodness I did get a email that predated  
24 that. Have you done that?

25 THE WITNESS: I have not gone back to my files.



IAITHER2

Puppo - Cross

1 THE COURT: You have not gone back.

2 THE WITNESS: No.

3 THE COURT: Next question.

4 BY MR. BROWN:

5 Q. So you unilaterally made the decision to have everyone sign  
6 these arbitration agreements without consulting anyone else?

7 A. Yes.

8 Q. So did you give employees anything in return for signing  
9 these agreements?

10 The arbitration agreement, was anything given to them  
11 in return for signing?

12 A. No.

13 THE COURT: A document or a benefit? I'm not sure I  
14 understand.

15 Q. Any kind of benefit.

16 A. No.

17 Q. Either extra money, extra vacation, anything like that?

18 A. No, no, no.

19 Q. Would you agree that the arbitration agreement requires the  
20 employees to give up some sort of legal right?

21 A. Yes.

22 Q. So what do they get in return for giving up that right?

23 MR. DOBRY: Objection, calls for speculation.

24 THE COURT: Do you know? Were you involved in  
25 preparing this agreement?

IAITHER2

Puppo - Cross

1 THE WITNESS: No.

2 THE COURT: The agreement, you said, predated your  
3 tenure.

4 THE WITNESS: Yes.

5 THE COURT: Sustained. Next question.

6 Q. You said also it was not a condition of continued  
7 employment that they sign this agreement.

8 MR. DOBRY: There was no testimony like that.  
9 Mischaracterization of former testimony.

10 MR. BROWN: I'll rephrase.

11 THE COURT: I thought she had said -- so the question  
12 was: It was not a condition of continued employment. I think  
13 she testified to that, but I will ask again.

14 If an employee refused sign the arbitration agreement,  
15 would that have any impact on their continued employment?

16 THE WITNESS: No.

17 THE COURT: No. Go ahead.

18 Q. You said part of your job was to make -- to make sure that  
19 the personnel files were complete, correct?

20 A. Yes.

21 Q. So why did you wait three months to review the personnel  
22 files to see that the arbitration agreements were missing?

23 A. When I started working for the company I also reviewed  
24 documents for other stores. So I took care of one store, took  
25 care of another store, and I was now at 55th Street, but it was

IAITHER2

Puppo - Cross

1 more because I was reviewing the documents because we were  
2 moving. And then I said okay, since I need to clean out these  
3 files and get everything in order, then I noticed that these  
4 are missing a lot of these forms, and then I took the  
5 opportunity, since I was going over on the 13th.

6 THE COURT: It was just that location or other  
7 locations also?

8 THE WITNESS: The other locations I already updated  
9 the files.

10 THE COURT: You already updated those files.

11 THE WITNESS: Yes.

12 THE COURT: What caused you to update the files at  
13 some locations before other locations?

14 THE WITNESS: Well, only because of the location I was  
15 concentrating on: Okay, let me concentrate on this location,  
16 let me make sure that everything is in order. And then I moved  
17 to the next location.

18 THE COURT: But what order did you choose? Why did  
19 you pick some first and others later?

20 THE WITNESS: It was more because I was hiring and I  
21 needed to hire new people for that location, and I said okay, I  
22 need to make sure that their employees' files are in order,  
23 because as HR, when I start working for a company, I usually do  
24 an audit of their policies and their employee files.

25 THE COURT: How many locations were there?

IAITHER2

Puppo - Cross

1 THE WITNESS: Three.

2 THE COURT: Three locations. What are they again?

3 THE WITNESS: The 27th Street location, the 40th  
4 Street location, and then 55th.

5 THE COURT: Which one did you do first?

6 THE WITNESS: I believe it was the 27th Street  
7 location.

8 THE COURT: Okay. But it has nothing to do with  
9 starting south and moving north?

10 THE WITNESS: No, I think it was more that I needed to  
11 hire for that location.

12 THE COURT: Was there hiring at the other locations?

13 THE WITNESS: Yes, but there was a turnover in that  
14 location that was hiring, so there was new hire documents and  
15 going through the employee files.

16 THE COURT: Okay.

17 BY MR. BROWN:

18 Q. And you said you only went to the workplace two times to  
19 talk about the agreement, correct?

20 A. Sorry?

21 Q. You only went to this work location two times, July 13 and  
22 July 17, correct?

23 A. Well, I had been to that location many times before.

24 Q. For the purpose of distributing agreements?

25 A. Yes.

IAITHER2

Puppo - Cross

1 Q. And how many agreements did you distribute on the 13th?

2 A. I did not count exactly how many I distributed. It was to  
3 the group that was there in addition to the other employees at  
4 that location.

5 THE COURT: How many did you bring? How many forms  
6 did you bring?

7 THE WITNESS: Well, I think I brought with me about --  
8 that location does have approximately like 50 to 70 employees.  
9 I didn't bring that many with me, I brought approximately 15,  
10 and if I needed more I would make them. They have a copy  
11 machine.

12 THE COURT: So 50 or 70 employees in that location?

13 THE WITNESS: Yes.

14 THE COURT: I thought I asked how many were in the  
15 company and you said 75.

16 THE WITNESS: No, for that particular -- for Between  
17 the Bread Events and Celebrations.

18 THE COURT: For all of the -- you're HR for a number  
19 of different entities that are associated with Between the  
20 Bread, right?

21 THE WITNESS: Yes.

22 THE COURT: So how many employees are there with those  
23 various entities?

24 THE WITNESS: So there's approximately 110 employees.

25 THE COURT: 110. All right.

IAITHER2

Puppo - Cross

1 Go ahead.

2 BY MR. BROWN:

3 Q. So did you give out all 15 of those agreements?

4 A. I may have, yes.

5 Q. Did you get more and distribute more than the 15?

6 A. Get more and distribute more?

7 THE COURT: Well, did you run out and say: I need to  
8 make more copies, there's such a land rush here on these forms.

9 THE WITNESS: I don't recall if I made the copies when  
10 I first arrived because I needed more. Because when I go to  
11 that location usually I have to make more copies because  
12 sometimes there are more employees than I expected to meet with  
13 for new hire paperwork. So I didn't bring 50, I brought  
14 approximately 15 to 20, maybe, and I did distribute all the  
15 ones I had on me.

16 Q. So you didn't make any more copies after you distributed  
17 the 15?

18 A. No, I don't recall making more copies.

19 Q. Did you distribute -- how many agreements did you  
20 distribute on the 17th?

21 A. On the 17th, I think maybe --

22 MR. DOBRY: Objection, foundation.

23 THE COURT: Overruled.

24 A. I think maybe two.

25 THE COURT: You were back the 17th and brought more

IAITHER2

Puppo - Cross

1 forms with you?

2 THE WITNESS: No, I didn't have more forms with me on  
3 that day.

4 THE COURT: Did you distribute -- I thought you --

5 THE WITNESS: I did. I gave to Paul, because I was  
6 there for the new hire, then I had paperwork with me.

7 THE COURT: So you had more forms with you.

8 THE WITNESS: Yes, but they weren't -- it was like I  
9 had single forms for that, I had the new hire paperwork for two  
10 new hires, and then I just pulled them out from the new hires  
11 and I gave it to the two employees.

12 Q. So how many copies did you have with you on the 17th?

13 A. On the 17th I had two, because I had two new hire packets.

14 Q. It says, if you look at Defendant's Exhibit 3, which is  
15 your declaration, paragraph 41 --

16 THE COURT: Paragraph 41?

17 MR. BROWN: Yes.

18 Q. It says that you located copies of the employment policies  
19 as well as the arbitration agreements, to paraphrase.

20 This is the top of the last page.

21 THE COURT: Top of page 9. Do you see that?

22 THE WITNESS: Yes.

23 THE COURT: What's the question?

24 Q. Did you -- you said you had two copies with you. Did you  
25 go and locate more copies, find additional ones?

IAITHER2

Puppo - Cross

1 A. No, as I stated a minute ago, I had new hire packets on me,  
2 and because I had new hire packets on me, those documents would  
3 be included in those. So I located them and I pulled them out.

4 Q. You located them within your new hire packet?

5 A. Yes.

6 Q. Did the new hires get those -- any of those documents?

7 A. Well, then I needed to -- well, I brought two new hire  
8 packets on me only because I wouldn't just carry one, and so  
9 when I went inside, then I actually -- well, with Maria I  
10 would -- I gave her a copy to keep in her office of new hire  
11 documents.

12 THE COURT: You said you went there with two copies  
13 for new employees.

14 THE WITNESS: Yes.

15 THE COURT: And when you were there you gave Maria a  
16 set for her office.

17 THE WITNESS: No, no, no, what I'm saying is that I  
18 had previously given Maria a copy of new hire -- I gave her a  
19 new hire packet, basically, so I knew that in her office she  
20 would have one. So when I had those two on me and they asked  
21 me, I just automatically got them out of the new hire packets  
22 that I had on me.

23 THE COURT: How much more do you have?

24 MR. BROWN: Probably another two or three minutes.

25 THE COURT: Two or three minutes?



IAITHER2

Puppo - Cross

1 MR. BROWN: Yes.

2 THE COURT: All right.

3 BY MR. BROWN:

4 Q. Did you set a deadline for when they had to sign the  
5 documents and return them?

6 A. No, I didn't set a deadline.

7 Q. It says that in your declaration last paragraph, middle of  
8 the paragraph, page 9: Rather I indicated that they may return  
9 any signed documents to me on Thursday.

10 What do you mean by that?

11 A. Because I was going to return to the office on Thursday.

12 THE COURT: You knew you were going to return on  
13 Thursday?

14 THE WITNESS: Yes.

15 THE COURT: Why did you know that?

16 THE WITNESS: Because I knew that I needed to review  
17 things with Maria.

18 THE COURT: What things did you need to review?

19 THE WITNESS: Because when I was reviewing all the  
20 employee files, and because I had taken over the payroll, then  
21 I noticed that there were a lot of employee files --

22 THE COURT: I thought you said you went there because  
23 there were with two new employees, that's why you went on the  
24 17th. Am I wrong about that? Isn't that what you said?

25 THE WITNESS: I went on the 17th for new hire

IAITHER2

Puppo - Cross

1 paperwork for a new employee, yes.

2 THE COURT: I thought you said it was two new  
3 employees.

4 THE WITNESS: No, I brought two new hire packets with  
5 me.

6 THE COURT: So you went back on the 17th because of a  
7 new hire?

8 THE WITNESS: Mm-hmm.

9 THE COURT: And did you know that on the 13th that  
10 there was going to be a new hire that would be coming back on  
11 the 17th?

12 THE WITNESS: No.

13 THE COURT: But you told people on the 13th that you  
14 would be coming back on the 17th.

15 THE WITNESS: No, I said to them that I would be back  
16 next week.

17 THE COURT: Next week.

18 THE WITNESS: Yes, next week. I didn't say a  
19 particular day, I didn't say on the 17th on Tuesday, I said I  
20 would be back next week, stop back next week.

21 THE COURT: Go ahead.

22 Q. What percentage of employees would you say come back with  
23 signed agreements, based on your experience?

24 A. My experience -- in my 20 years experience usually all  
25 employees return acknowledgment forms; and of employee

IAITHER2

Puppo - Redirect

1 handbooks, if they choose not to sign, then of course I mark it  
2 that they refuse to sign.

3 Q. What about not just the employee handbooks, I'm talking  
4 about the arbitration agreements. Same thing?

5 A. Well, no, no other company that I worked with had an  
6 arbitration agreement.

7 Q. You said that you were going down store by store and giving  
8 out agreements, correct?

9 A. Oh, yes. You mean at the Between the Bread?

10 Q. Well, yes, I'm saying Between the Bread. What percentage  
11 of arbitration agreements would you say come back signed that  
12 you distributed?

13 A. A hundred percent.

14 MR. BROWN: No further questions.

15 THE COURT: Any anything else?

16 MR. DOBRY: Real quick.

17 THE COURT: Real quick.

18 REDIRECT EXAMINATION

19 BY MR. DOBRY:

20 Q. The other locations you mentioned, the 27th Street and the  
21 40th Street, are those owned by the BTB Events and  
22 Celebrations, Inc.?

23 A. No.

24 Q. Do either of those two entities or stores, do they employ  
25 any catering assistants?

IAITHER2

Puppo - Redirect

1 A. No.

2 Q. Does only BTB Events and Celebrations conduct catering out  
3 of 55th Street? Is that correct?

4 A. Yes.

5 Q. Is the 27th Street location the location that had the issue  
6 with a sexual harassment allegation?

7 A. Yes.

8 Q. The Thursday that is referenced in the final paragraph of  
9 your corrected declaration in Defendant's Exhibit 3, is that  
10 the Thursday following the 17th of July, or are you -- when did  
11 you tell people that you would be back on Thursday, on the 13th  
12 or the 17th?

13 A. On the 17th.

14 Q. Did you return on the 17th to collect anyone who signed?

15 A. No, I did not.

16 Q. Other than --

17 THE COURT: That's because you learned about the  
18 litigation at that point and you were told to back off.

19 THE WITNESS: Yes.

20 THE COURT: Who told you to back off?

21 THE WITNESS: Counsel, advice of counsel.

22 THE COURT: Counsel in this case, or is there a  
23 general counsel in the company?

24 THE WITNESS: No, counsel. Because once I learned of  
25 it through the via the email, then I spoke with counsel and he

IAITHER2

1 advised us on not moving forward and just discontinuing.

2 THE COURT: Okay.

3 MR. DOBRY: No further questions.

4 THE COURT: All right. Nothing else?

5 MR. BROWN: No, your Honor.

6 THE COURT: You can step down, thank you.

7 No other witnesses, right? Do you want submissions,  
8 argument, what do you -- what did you anticipate doing next?

9 MR. BROWN: However the Court sees fit. We could  
10 provide a written statement.

11 THE COURT: I don't want to belabor this. I don't  
12 want run up costs unnecessarily. If you want to do that, I'm  
13 okay with that. If you don't want to, there's no point.

14 What do you want to do?

15 MR. BROWN: I'm fine doing a written submission.

16 THE COURT: A written submission.

17 MR. DOBRY: Your Honor, I could -- I'm more than happy  
18 to briefly summarize what was discussed today and apply it to  
19 the scope of a motion for preliminary injunction.

20 THE COURT: Well, I mean so that's the issue, do you  
21 want to do that orally or in writing? One of you wants to do  
22 it in writing, one orally. Correct?

23 MR. BROWN: I'm a better writer than speaker.

24 THE COURT: When do you want to make the submissions?

25 MR. BROWN: I could do it within the next ten days or

IAITHER2

1 so, if that would be fine. By next Friday?

2 THE COURT: All right. Next Friday. And then you  
3 respond a week after that, I guess?

4 MR. DOBRY: I guess, your Honor. But personally I  
5 don't think that it's necessary for another round of written  
6 submissions when your Honor has heard all the evidence and the  
7 evidence has shown that there's simply has been no harm. Out  
8 of the 18 potential opt-in members of the stipulated class,  
9 eleven opted in.

10 The final day -- pursuant to the joint letters that  
11 were submitted suggesting the date of mailing, the final day of  
12 the opt-in period at the very latest was July 13. Mr. Lobel  
13 didn't speak with Gina to receive a copy of the arbitration  
14 agreement until the 17th, after the period had expired.  
15 There's simply no evidence to suggest that any potential opt-in  
16 member was chilled, prevented, retaliated against or  
17 discouraged in any way with respect to the collective opt-in  
18 period or the arbitration agreements.

19 In fact, all of the declarants who were part of the  
20 stipulated potential pool who received the arbitration  
21 agreements did not sign, were not fired, and all still opted  
22 into this lawsuit signing those documents, whether or not they  
23 actually received the notice themselves, signed those  
24 documents, apparently, before -- well before, back in June of  
25 2018.

IAITHER2

1 THE COURT: I get all that, so that's why I'm not  
2 sure -- so what do you want to do in a written submission?

3 MR. BROWN: Since we're already here and arguing the  
4 facts, I could argue it now.

5 THE COURT: Okay.

6 MR. BROWN: So we did hear from the witnesses and it's  
7 pretty much undisputed at this time that there was an  
8 arbitration agreement that was distributed during the opt-in  
9 period.

10 THE COURT: Well, the very end of it, right?

11 MR. BROWN: It was on the last day, but that could be  
12 one of the most critical times during the opt-in process.

13 THE COURT: But it didn't chill any of these  
14 witnesses, right?

15 MR. BROWN: Not these particular witnesses.

16 THE COURT: Did it chill any -- what's the evidence it  
17 chilled anybody?

18 MR. BROWN: I think the agreement speaks for itself.  
19 I mean we heard from Ms. Puppo that there was a hundred percent  
20 return rate on these agreements, that there was a message being  
21 sent to the individuals during the opt-in period.

22 THE COURT: But that message, if it was sent, it  
23 certainly wasn't internalized because none of these witnesses  
24 actually signed the agreement. So it's not a hundred percent  
25 that -- I mean a hundred percent of the witnesses who testified

IAITHER2

1 didn't sign, so the only person who did sign, apparently, was  
2 Christian, who made a hearsay statement to one or more of the  
3 witnesses today that he felt chilled, but that's all there is,  
4 I think.

5 MR. BROWN: There was also -- we did have testimony  
6 from Ms. Puppo that there was another individual who was a  
7 member, Paul --

8 THE COURT: He wasn't approached until after the  
9 opt-in period, right?

10 MR. BROWN: Yes.

11 THE COURT: So how is he chilled?

12 MR. BROWN: He was approached, according -- well, we  
13 don't know --

14 THE COURT: None of your witnesses put Paul at this  
15 meeting, and Ms. Puppo didn't say she had this conversation  
16 with Paul on the 13th. So I don't understand how Paul was  
17 chilled from entering into or opting into this litigation by  
18 virtue of an arbitration agreement that was presented to him  
19 after the opt-in period closed. That seems illogical.

20 MR. BROWN: There is a very high likelihood that there  
21 were discussions amongst the employees. We know there were  
22 immediate discussions amongst the employees about this  
23 agreement, and there's a high likelihood they heard about the  
24 agreement.

25 And that's why, even if it's just a notice to these



IAITHER2

1 individuals saying that this agreement was given during the  
2 opt-in period, and therefore was improper, we'll give you one  
3 last chance to opt in. I think that would eliminate all doubt  
4 as to whether these individuals were chilled or not. We don't  
5 have proof that they were chilled, we don't have any of them  
6 here, unfortunately, but I think, given the circumstances and  
7 given the fact that these people were given the agreements  
8 during the opt-in period warrants at least notice and a short  
9 reopening of the opt-in period.

10 THE COURT: Okay. Look, I'm not sure I found  
11 Ms. Puppo wholly credible. It seems to me that the timing is  
12 quite coincidental, if that's what it was, and it seems that  
13 the HR operation at this company is quite haphazard, if that's  
14 the case.

15 Nonetheless, it doesn't seem to me that there's any  
16 need to send out additional notices to reopen the opt-in period  
17 or to avoid arbitration agreements. There's been no testimony  
18 that reflects that anybody was chilled. The witnesses who  
19 testified weren't chilled. Each insisted that they felt  
20 intimidated. I will say I don't find Ms. Puppo to be  
21 intimidating at all. I could barely hear her and I'm right  
22 next to her. So I think the suggestion of each witness that  
23 they were intimidated, wasn't so much what she said but how she  
24 said it, I found that preposterous.

25 I also was really struck about how the declarations of

IAITHER2

1 all the witnesses who ended up testifying were virtually  
2 identical, how they were inconsistent with much of the trial  
3 testimony, how it seems that the declarations seem to have been  
4 prepared without a lot of input from the witnesses themselves.

5 I can go through them and talk about them, but it  
6 seems to me that Mr. Teutle never said anything about July 16.  
7 In fact, he disclaimed it on the stand today. He insisted he  
8 never new the name of the person. It wasn't until today when  
9 he was confronted with his own declaration that he said oh, it  
10 must be Gina, I'm learning it now. Gina informed us that we  
11 were required to sign the document. He didn't say that on the  
12 strand. That struck me as troubling, to say the least.

13 We also had Carlos Gonzalez who didn't sign the  
14 document with his signature.

15 And we also had Mr. Hernandez, Constantino Hernandez,  
16 who didn't sign the document and says it's not his signature.  
17 His declaration, he also disclaimed portions of it, and  
18 portions of it were definitely contradicted by his testimony.  
19 Mr. Hernandez didn't say that they were required to sign the  
20 document by Thursday, as he does in his declaration. He didn't  
21 say that many of the newer employees signed the agreement. He  
22 didn't say that on the stand today.

23 And so again, I think there's a disconnect between the  
24 declarations and the testimony here in court.

25 With respect to Mr. Gonzalez, again, I find his

IAITHER2

1 testimony with respect to the intimidation factor that  
2 plaintiffs insist was present here to be not supported by the  
3 evidence that I have seen.

4 Now I don't think it's good form to be reaching out to  
5 litigants, to individual plaintiffs or potential opt-in  
6 plaintiffs during the opt-in period, even if it's the last day,  
7 with arbitration agreements. And so I'm a little skeptical of  
8 the timing. But that being said, I don't see the remedies  
9 being sought by the plaintiffs here to be necessary because I  
10 just don't think there's any basis to conclude that people were  
11 kept out of this by the activities of the 13th and 17th of  
12 July.

13 So I'm going to deny the request for an injunction,  
14 deny the request for the relief of reopening the period, of  
15 sending out additional notices or voiding the arbitration  
16 agreement. Certainly the arbitration agreement, I'm not ruling  
17 that it can't be voided at some point. I'm not being asked to  
18 do that. There's nobody who has come forward and said I signed  
19 the arbitration agreement but I shouldn't be bound by it  
20 because I didn't understand it or I didn't think I had a choice  
21 because they were so intimidating. Nobody has said that. So  
22 if somebody wants to challenge the arbitration agreement in  
23 some other suit, then I guess they can do that, and that will  
24 be for some other judge to decide, perhaps based on some of the  
25 same testimony here. I don't have to rule on that today. But

IAITHER2

1 I'm not going to going to grant the relief requested.

2 It's clear, I think, from the testimony, no one  
3 contradicted it, that the defendants are not offering the  
4 arbitration agreement to anybody at the moment. So to the  
5 extent something improper happened on the 13th, it has not been  
6 replicated since then, or at least certainly not since the 17th  
7 of July. So I am not worried about future violations or  
8 improper communications of any kind. If that changes, you will  
9 let me know. But for all those reasons I'm going to deny the  
10 request, and I do think there should be much more care given to  
11 declarations of this sort. It seems to me that the witnesses  
12 were not familiar with them, and some cases outright  
13 contradicted them.

14 I did think, while I'm at, that Ms. Puppo's  
15 declaration had points that she had no business making. I  
16 don't really need her to be opining on the quality of the  
17 declarations of other witnesses, whether they were duplicative  
18 and prepared by the same lawyer. That's not her place to do  
19 that. So there's a limit to what a witness should be asked to  
20 do, and I think lawyers sometimes really put their own  
21 witnesses in jeopardy when they try to have them carry too much  
22 weight. With that, then I'm going to deny these requests.

23 Where are we now with discovery and where are we now  
24 with the case management plan that was previously set?

25 MR. DOBRY: I believe discovery, the fact discovery

IAITHER2

1 deadline isn't until December, but I had discussed earlier that  
2 after this meeting we would speak and see where we're at with  
3 discovery.

4 THE COURT: In other words, you may need more time  
5 because this slowed things down?

6 MR. DOBRY: Yes, your Honor.

7 THE COURT: I assume it must have slowed things down.  
8 Huddle up, get back to me. If you think we need more time,  
9 tell me what you propose. Be reasonable. If you agree and  
10 you're reasonable then I'm not going to have a problem with it.  
11 I can't imagine you giving yourselves an extra eight months or  
12 something, but if you think a couple extra months, I think  
13 that's reasonable given how long this has taken.

14 Is there anything else?

15 MR. BROWN: Your Honor, just one quick question.  
16 Previously you had ordered that you would defer decision  
17 regarding putative class members if we were to get to that  
18 point. Does that decision still stand?

19 THE COURT: Putative class members?

20 MR. BROWN: That the agreements were also given in  
21 addition to it putative collective action members, and you said  
22 that issue was still not ripe because we haven't reached that  
23 point. Does this decision affect your other decision regarding  
24 putative class members?

25 THE COURT: I think it would affect it because it

IAITHER2

1 doesn't seem to me anyone was chilled. The notice went out, so  
2 you're talking about on a motion for additional notice or just  
3 a class action on the New York labor law based on the size of  
4 the class and the scope of the class that has already been  
5 developed through discovery?

6 MR. BROWN: The class size is much larger than the  
7 FLSA collective action size.

8 THE COURT: Because of the numbers of years.

9 MR. BROWN: Because of the number of years and also it  
10 includes more than catering assistants.

11 THE COURT: That motion hasn't been made, and I don't  
12 know when you are planning to make it, but I haven't ruled on  
13 that. So it does seem to me the findings here today could  
14 affect that, but I'm not sure that they will be dispositive  
15 towards that. You could make the motion, and if and when you  
16 want to make that motion you should do it in the normal course  
17 with a promotion letter.

18 Do you have a sense of the timing on that?

19 MR. BROWN: Most likely immediately after the close of  
20 discovery.

21 THE COURT: So it doesn't preclude you from making the  
22 motion. Tee it up in a premotion letter and then they will  
23 respond and then we'll talk about it.

24 MR. BROWN: Thank you, your Honor.

25 MR. DOBRY: And your Honor, we would like to reserve

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1 all issues and relief stemming from the declarations,  
2 particularly Mr. Hernandez, which I believe he claimed was  
3 forged, or that was not his signature and he did not sign that  
4 document.

5 THE COURT: Look, we didn't get into whether it's  
6 forged or not. He said it wasn't his signature. It looked  
7 very similar to his printed name, so it may be -- look, there  
8 could be a number of reasons. It could be that he was confused  
9 he thought he had to write his name, not his signature, it  
10 could be he forgot, I don't know. We didn't explore that  
11 really.

12 I do have the Court Exhibit 1, which I will docket,  
13 which is his signature, and as you or Mr. Dobry pointed out,  
14 the signature is also in another exhibit that was part of the  
15 binder today to show that clearly it's not his signature;  
16 whether it's not his handwriting is a different issue. It's  
17 not a signature, I think that's clear.

18 MR. DOBRY: I wasn't asking for a determination on  
19 those issues today, I would just like it to be reflected on the  
20 record that it's preserved.

21 THE COURT: Yeah, nothing is prevented. You can  
22 certainly cross these witnesses again based on this testimony  
23 and these documents if and when we ever get to a trial, for  
24 sure.

25 MR. DOBRY: Thank you, your Honor.

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1 THE COURT: Let me thank the court reporter, as  
2 always, and I got to run, so I will issue a short order to that  
3 effect.

4 MR. BROWN: Thank you.

5 MR. DOBRY: Thank you.

6 (Adjourned)



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